

الشاغمة اشتراط الزوج أو المحرم أو النسوة الثلاث، ولي قول تكفي امرأة واحدة نكح. ولي قول نكح عدة  
الكرايمى وصحة في المهلب تسافر وحدها إذا كان الطريق آتياً، وهذا كله في الواجب من حج لم  
عورة. وأوجب النفال طرده في الأستفاد كلها، واستحب الروياتي قال: إلا أنه خلاف النص.

# DAWRAH FIQH

# CONCERNING WOMEN

## Manual for A Course on Islam and Gender

KH. HUSEIN MUHAMMAD • FAQIHUDDIN ABDUL KODIR • LIES MARCOES NATSIR • MARZUKI WAHID

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KH. HUSEIN MUHAMMAD • FAQIHUDDIN ABDUL KODIR • LIES MARCOES NATSIR • MARZUKI WAHID

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## P R E F A C E

**T**his book is a reflection of the Indonesian Fahmina Institute's long involvement in organizing training sessions for experienced activists of the women's movement. The idea to produce it originated from the need of some of the activists for a better understanding of one specific issue, i.e. Islam and gender. In their experience it is almost unavoidable to address the religious issues whenever speaking about women's issues. This is particularly true for matters such as dealing with women's political participation and their public role, women's leadership and their right to take decisions, problems concerning marriage, including a woman's legal representation and the rights and responsibilities between husband and wife, but also concerning inheritance, reproductive health and many other subjects: in reality these are all strongly connected to religion.

The initial training sessions were very favourably received. Participants included many of the more experienced activists from all over Indonesia, including Prof. Saparinah Sadli, Kamala Chandrakirana, (National Commission of Women's Rights *Komnas Perempuan*), Ninuk Widyantoro (Women's Health Organization/*Yayasan Kesehatan Perempuan*), Budhy Wahyuni, Hambali (PKBI-Indonesia Family Planning Association), Debra Yatim (*Komseni*), and Siti Hidayati Amal (University of Indonesia), just to name a few. Later The Fahmina Institute also organized equally successful shorter training sessions.

In order that others can use our experience in this field to their advantage, we documented our activities and modified some of the most relevant material, resulting in this manual. Besides containing general guidelines it also presents complementary articles for each part of the book, which illustrate and/or support the points of view presented here. Included too is a list of further recommendations that will support reaching a deeper understanding of the various themes.

The authors wish to thank all who have assisted in producing this publication. Particularly the training participants: they shared their experiences with us, both on a private level during the training sessions, so that documenting the work from the field produced very rich data, and institutionally, resulting in the realization of this publication. Also we express our deepest gratitude to all the experts and other sources whose work we were allowed to use as reference material. Among them are Dr. Siti Musdah Mulia, Badriyah Fayumi MA, Dr. Nur Kholis Setiawan, Abd. Moqsith Ghazali MA and Dr. Michael Feener.

We are aware that there might be the need for a publication like this by others outside Indonesia, which is why we provide an English version. We have discussed the content of the manual with some of our foreign colleagues, like the Sisters in Islam from Malaysia, whose experiences in the same field we were able to implement in an Indonesian context, and we have adapted some of their material both in the training sessions and this publication. For the English publication of this manual therefore The Fahmina Institute wishes to express its deepest gratitude to The Alexander Garbode Foundation and The Asia Foundation who made it technically and financially possible to translate and publish it in English. Also to Marlene Indro Nugroho-Heins, who is responsible for translating all of the material, and Dandy Fikhriyanto who translated a number of references and case studies. Many thanks to Mufid Aziz and Mas Gembong for providing the drawings and illustrations. Finally, we would also like to express our thanks to all our associates, friends, and other experts who so steadfastly supported us, and allowed us to use their material in this publication.

Last but not least we thank Allah, to whom we dedicate our sincerest efforts.

Cirebon, 20 July 2006

The authors.

## FOREWORD

by Ziba Mir-Hosseini

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**G**ender equality is one of the most contentious issues debated among Muslims. The roots of the debate are entangled in the history of relations between Islam and the West, and in the anti-colonial and nationalist discourses of the first half of the twentieth century. With the rise of political Islam in the second half of the century, the debate acquired a different edge, and a new phase in the politics of gender in Islam began. Islamists, with their political slogan of “Return to Shari’ah”, attempted to translate into policy the outmoded tribal and patriarchal notions of gender formulated by pre-modern Muslim jurists and to implement them through the machinery of a modern state, and thereby provoked critiques of these notions and spurred women to increased activism. By the end of the century, the issue of gender equality had become part of the larger intellectual and political struggle among Muslims between two understandings of their religion, two ways of reading and relating to its sacred texts. One is an absolutist, dogmatic and patriarchal Islam that makes little concession to contemporary realities and Muslim aspirations. The other is a democratic, pluralist and rights-based Islam that is making room for these realities and aspirations.

This rights-based Islam, with its concomitant notion of gender equality, is nowhere more developed and widespread in the Muslim world than in Indonesia, as this book testifies. It is important to remember that Indonesia not only is the largest Muslim nation-state but also has the most women scholars and religious leaders. Arising from the vast networks of the two mass religious organizations (Muhammadiyah and Nahdlatul Ulama) that have defined and shaped Indonesian Islam since the early twentieth century, these women are now not only taking an active part in the production of religious knowledge but also talking back to the advocates of absolutist and patriarchal Islam.

These two facts, which have little parallel elsewhere in the Muslim world, account to a large extent for the refreshing absence in the Indonesian women's movement of the dichotomy between Islam and feminism that continues to divide women's rights activists in many other Muslim contexts, in particular in the Middle East.

The book makes two major contributions. First, it makes available for the first time in English the training manual developed by the Fahmina Institute -an Indonesian pesantren based NGO that supports women empowerment through Islamic teaching. This manual is targeted towards women activists who have no Islamic educational background, with a view to providing them with both theoretical and practical guidance on how to argue for gender equality within Islamic legal thought. Secondly, the book details the core elements of the rights-based Islam, which can bring about the much needed paradigm shift in Islamic law and to go beyond old jurisprudential dogmas in search of new questions and new answers. It does this by historicizing and contextualizing the discriminatory rulings on women that have become part of Islamic law, showing that they are neither manifestations of the divine will nor immutable, but rather that they are juristic constructs that are shaped by, reflect, and can change with time and place.

This book is a powerful training tool for all those who are struggling to give voice to an ethical and egalitarian vision of Islam, which can only be achieved by severing the Islamic ideals and the sacred texts from the patriarchal biases and rulings that have hitherto distorted them. It is only then that Muslims can be freed from taking apologetic and defensive positions.

London August 2006

## FOREWORD

by Saparinah Sadli

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She chaired the first Women's Studies, graduate program at the University of Indonesia (1989-1999) and  
was the Chair of the National Commission on Violence against Women  
which was established in 1998 (from 1998-2003)*

**T**he Indonesian women's movement has a long history. Even from before Indonesia's independence, women were actively involved in the struggle for independence. The first Indonesian Women's Conference, in 1928, was resulted in formulating a strong political statement, which clearly showed the active support of women for the Indonesian nationalist movement: to fight for the country's basic right of independence, and to reject colonial occupation.

In the early 20<sup>th</sup> century most of the Indonesian woman activists came from the upper-middle classes, but after Indonesia's independence they came from various educational and religious backgrounds. Increasingly, they also became aware that in reality many of the issues addressed in the women's movement were more or less strongly influenced by religion. This became clear from the discussions that eventually led to the formulation of the first Indonesian Marriage Law (1974). It still holds at present, in the sometimes heated discussions on the anti-pornography bill.

The latest issues concern bringing down the unacceptably high number of mothers mortality rate, the right to choose contraceptives, the right to decide how many children one has and when to have them, the right to breastfeed in the work-place, violence against women, including domestic violence, the discrimination against women in the public and private sphere, the right to access to high-quality, gender-based reproductive health care, women and HIV/AIDS, women's (political) leadership, and other themes, all of which are, directly or indirectly based on and related to religious values.

One of the most sensitive issues being addressed at present is the pressure from certain interests groups in society that consider themselves, in the name of 'culture' and with the pretext of religious morals to have the right to decide how women should behave and how they should look. All of this is a result of the ever-present

discrimination of women - in the public and private sphere, and notwithstanding the implementation of anti-discrimination law that defend women's interests. Examples of the discrimination of women in the work-place are rife. Employers still treat women employees differently from their male colleagues. All too often women get paid less for doing the same work as men, or in positions with an equal job responsibility. In Indonesia this should be better regulated, because there are laws defending the rights of women. However, gender inequality is difficult to address because of some of the existing religious views, particularly the one according to which *'a man is the head of the household, while a woman is a housewife'*. One reason why women, compared to men, don't receive equal payment, even in the same job, is that women workers are seen as 'extra-wage earners', whose salary is not seen as a household's main source of income, but rather as an effort to complement the family's needs.

Instances of discrimination of women are increasing ever since Indonesia went ahead and implemented its policy of Regional Autonomy. The various regions are now allowed, within certain limits, to implement their own legal rules and regulations. In the name of culture and religious moral some of these regulations have imposed very strict limitation on the way women are allowed to look, and the time of day that they are allowed to go out, under the pretext of providing protection from sexual harassment. This is a socio-political development that worries many people, particularly the women activists who, for at least during the past 20 years have had such a tough time struggling to defend some basic women's rights, such as the right not to be discriminated, and addressing some of the misguided stereotypes that are disadvantageous to women.

We are aware that the road towards the elimination of gender injustice and establishing ways that support gender equality is a long and often tiring one. We are also aware that this struggle is a concerted effort: it needs the support and solidarity from all women's groups, whose members are fighting the same battle, but in different ways and in their respective fields, yet with the same aim. The ideal is to develop a society that is characterized by equality, freedom, and justice, with respect for the highest ideals formulated by humanity.

The human ideals that this struggle is about are basically directed at initiating social change in various fields of society. The role of the women's movement, anywhere, basically concerns a struggle for social change. It is particularly aimed at improving women's status and position, which in many societies, including Indonesia, is still considered as unequal to the status and position of men.

Discrimination has various negative consequences, for women as well as in the wider context of society. Because in ignoring women's interests we not only neglect the needs and potential of half the country's population, which is in fact needed to develop

the country as a whole, but we also make it impossible for them to develop themselves, efforts that are regarded ‘useless’. This is a reality which is often – but without the awareness of most – the result of the implementation of views that are based on religion. Consequently the struggle to implement social change that is closely related to the various aspects of women’s lives cannot be separated from a deep understanding of the various factors that have such an intimate, but complex interaction in defining the position and status of women in society.

One of these factors is the interpretation of religious values. We need to interpret and understand these religious values that underlie the social and cultural conditions in all of our lives well, and we need a deep understanding in order to support our efforts for achieving social change in which we respond to the needs and interests of women and children, to guarantee their basic (human) rights.

Our understanding of some of the social, cultural, and political conditions that are shaping women’s lives has made the Indonesian women’s activists aware that the struggle for women’s rights is strongly influenced by existing religious concepts, and it is therefore very difficult to separate women’s issues from religious discourse. In this context **The Fahmina Institute** under the charismatic leadership of Kyai Husein Mohammad has taken the initiative to organize training sessions directed at teaching a better understanding of the complicated inter-relatedness between Islam and gender.

What is unique in this training is its approach. The organizers had the brilliant idea to bring together some of the activists from the *pesantren* and other activists who do not have this specific religious educational background, and have them do this training together. Those who joined the training and who came from a *pesantren* background were already acknowledged experts in the field of reading, studying and interpreting religious texts from a women’s perspective. To assign some of them as facilitators in this course made the initiative from **The Fahmina Institute** even more interesting, particularly in the efforts of making us understand women’s issues and their close relation to religious values (as found in Islam).

As it turned out, the Islam and gender-training as organized by **The Fahmina Institute** quickly became well-known among women activists from all over Indonesia. The aim of the course, which has now become well-documented in this publication, remained the same: to give the participants a better understanding of some of the Islamic religious values that are so closely related to women’s lives. The book itself is entitled ‘*Dawrah Fiqh Perempuan*’, or ‘*Dawrah Fiqh concerning Women*’.

For me it is a special honour to write this publication’s foreword, because I have joined this training myself as one of the first participants in Cirebon, and I have learnt

such an important lesson! As a participant who lacks the specific religious educational background of the organizers and most other participants, I was initially quite reluctant to write a foreword, the more so, after reading the title, because I don't feel at all an expert of my own religion.

From the three basic words used in its title, '*Dawrah Fiqh concerning Women*' I only understand the word 'women'. Even though I have heard the word '*fiqh*' often enough, honestly I am not at all familiar with understanding the combination of '*Fiqh concerning Women*' itself. The same holds for the word '*Dawrah*' (course), a word that I had never heard before until I first saw this publication.

This fact also shows my own unfamiliarity with some of the basic concepts as taught in Islam, particularly *fiqh*, which has a meaning ranging from 'legal jurisprudence' to 'rules and regulations', and *fiqh* as seen from a women's perspective in particular. However, as it turned out I am not the only one who could not immediately understand the meaning of this publication's title. When one of my friends, who is also a feminist-activist (and does not have an Islamic educational background) saw me with this book (which I was about to begin reading) asked me directly "What means *Dawrah*?" – well, I couldn't answer her because I didn't quite know myself. However, her question pointed out quite clearly how terribly relevant it is to get to understand this book better.

After having read the Indonesian version of '*Dawrah Fiqh concerning Women*' I felt like a door had opened, inviting me to enter into the world of understanding Islam more comprehensively, obtaining a better understanding of the various texts from the Qur'ân, using approaches that I have seldom come across, and explaining the history of some of my own religious teachings. The method used in this course I found very interesting. The facilitators, in fact the course itself, use a method that invites the participants to read the various texts in the book critically, and convince the participants that it is good to discuss the information we get from them; we next formulate our own conclusions concerning the meaning of some of these *sûrat* and *âyat*, the original texts from *hadîth* and Qur'ân.

This is not a new approach, because it is known in other training sessions for adult education too that use a participatory approach, and that we often find in gender training. However what is new here is using this approach for reading, studying and (re) interpreting original religious texts. Something which (according to my own limited understanding), is regarded as *haram*, strictly prohibited. Even more so when this is done by women.

Reading '*Dawrah Fiqh concerning Women*' taught me an important lesson and was at the same time an important eye-opener, illustrating the relevance of the availability

of a course like this, published in a book like this. I can also see that even when one does not take the course, it would still be necessary to read it, not only by women activists, but by the members of other social groups as well. So that, even though the book is a manual for a course, the texts provided as support for a discussion of the various themes include some very relevant reading material, particularly on understanding the meaning of Islamic values, which is the course's overall aim. Thus the readers who do not take this course can read some of the original *âyat* and *sûrat* of the Qur'ân and hadith as they are presented from a women's perspective. And of course some of the *fiqh* texts and rulings that are directly related to religious rules and laws that concern the relation between men and women. The confrontation with some of the texts that we are invited to re-read, but now from a women's perspective, might lead to resistance from those who are usually involved in reading these texts, because the women's perspective shows differences in some of the existing perceptions.

For someone who has no formal Islamic educational background, like me, and who can only join this training on Islam and gender for a short while, the reference texts and case studies in this book are refreshing as well as relevant, a true and well appreciated eye-opener. The approach taken in this book, combining some of the original views from religion and from the women's movement may well be the perfect choice for presenting the manual, because it is more directed to those participants of the course who do not have a formal Islamic educational background. The information provided in the course ranges from some of the basic Islamic concepts to the development and implementation of some of these into Indonesian Islamic law. The references presented here need to be read with gender-friendly coloured glasses, and complement some of our basic understandings (and misunderstandings) of Islam and women.

Because the focus on women within Islam is what makes this book so relevant, it asks to be read among the wide variety of books on similar topics, as on Islam and gender or Islam and women. Also, being remindful of the fact that Islam in Indonesia differs quite considerably from Islam else where, it is a monumental effort to publish it in English. In this way **The Fahmina Institute** is able to point out to the rest of the Islamic world the unique development of, and some of the issues in the Islamic women's movement in Indonesia. Through this approach the Islamic women's movement outside Indonesia might find a use, a lesson for its own development. Reading the texts in this book is very useful to gain an understanding of religion that is not gender-biased.

The material presented here might also become an important source for the countless women groups, mostly mothers that have regular sessions for discussing religious themes, and where the participants have had some lessons on Islam but often not educated in an exclusively Islamic educational institute. In their position as

mothers (within the household), who according to tradition and cultural values are expected to act as the first and ultimate source of information for the next generation on our customs, including religious values, the texts in this publication offer important alternatives that support our efforts to transform social values in the direction of gender equality, starting in the family. The book's content is certainly generally acceptable, because the authors, men and women, are all experts in the field of Islam as seen from a women's perspective.

Therefore this publication deserves to become an influential guide for the teaching of Islam, with a wider scope than just a handbook for training. Because its reference texts are meant to be read (which is one of the main activities of these religious study groups for women), the themes discussed in the texts will greatly assist in the development of an awareness and renewed appreciation among its readers on the meaning of some of the Qur'ân's original *sûrat* and *âyat*. At the same time the approach taken in the book to get its message across might also serve as an example for the renewed efforts in teaching adults – from the participants' passive attitude, based on memorizing parts of texts and regulations, to a more active attitude aimed at their empowerment.

The book's sub-title is '**Course on Islam and Gender**' is perhaps better understood by those who don't have a *pesantren* background. However, it does not cover this book's unique aim. What makes this book unique? There are three reasons for this.

*First* its general approach, in which methods for adult education are used (this is not that new for the facilitators or the participants in workshops and training), but when it is applied to the (re) interpretation of original texts from the Qur'ân, it is. It is unique because the participants are asked to critically read these texts, to formulate questions and to come up with new views on these texts, of which we thought they were unchangeable and static, nothing less than 'the word of Allah'; and subsequently discussing them, both with the other participants and the various facilitator (s), who are all acknowledged experts in the field of Islam and gender. This is certainly unusual when we read texts in the Qur'ân, or in any other course of Islam and gender, because this method makes it possible to come up with a different opinion, to differ from the facilitator as well as the other participants, but these differences are not considered improper or prohibited. This is the first remarkable difference with other courses on Islam teachings where it is usually based on a one-way track of communication, in which the (religious) teacher acts as the sole source of knowledge and the audience (students, participants) listen passively. This is a way of providing information which, in the end, will only result in religious teachings that are regarded absolute and only memorized.

In the *second place* this training method for adult education offers a way to arrive

at a better, deeper understanding of what is written in the Qur'ân, focusing on an awareness that enables us to transform, and not only limit ourselves to understanding the religious values in Islam from the strongly patriarchal viewpoint which has resulted in the development of gender inequality throughout society.

As a training method that aims at stimulating a transformation in the participants' way of thinking and understanding, the process of internalizing religious values, particularly in relation to women and Islam, is expected to take place not only as a means to get across information, but also on a level of further processing it, developing deep feelings of certainty, that takes place without its being forced. Focusing on ways of learning other than only on a cognitive level (just providing information 'one way') but by giving the opportunity to discuss information which is arrived at by the individual participants, the participants experience learning on an affective level too. In the end this will lead to a change in attitude, as was expected from the outset (as formulated as one of the training's aims). What is so impressive about this training is that the change in attitude of the participants is aimed to accelerate reaching norms and values that are related to human rights, principles of justice, equality, and the patterns of balanced gender relations that are based on Islamic concepts and seen from a women's perspective.

*Thirdly*, in the middle of the rise of 'new' Islamic teachings that are not always woman friendly, and which in one way or another lead to the rise of social tension, the **challenge** for every one of us is to make the religious texts that use a gender-friendly, women's perspective better understood by the majority of our *ulama*. In their position as religious experts, particularly in the field of the interpretation of religious texts, we hope that they will slowly come to appreciate and apply the method of dialogue, with other groups in society, in order for their message to satisfy as many people as possible. This is all the more important because there are so many initiatives of communal reading and reciting the Qur'ân, throughout Indonesia and throughout society, that it becomes more and more imperative to do this in the form of discourse, discussing texts and critically reading them, as in the example of this publication, '*Dawrah Fiqh concerning Women*'. So far our knowledge and understanding of religious texts has been limited to what is known as the 'banking system': the teacher knows best and the student/listener has to accept it all.

The method and the format of '*Dawrah Fiqh concerning Women*' is aimed at providing guidance and empowerment to the course's participants, on Islam from a women's perspective. This is a great breakthrough, strategic and courageous, which will certainly elicit more or less severe criticism. Particularly from those who have always emphasized the strongly patriarchal values and culture in our society, which

has ultimately led to the development of injustice and inequality, and which is not at all compatible with Islam's ultimate mission, as becomes clear from reading this book.

Because of this it is wonderful that this publication will become more widely known, reaching wider audiences, including those who will not have the time or the opportunity to join the actual training. Until now there are very few other publications which present such a focused and comprehensive view on Islam and gender as seen from a women's perspective.

Jakarta 17 August 2006.

## INTRODUCTION

**E**ach women's movement has its own unique characteristics, including in Indonesia. One such characteristic is the close relation between the religious women groups on the one hand, and the secular, non-religious women groups on the other. This has resulted in a form of synergy that, according to Zainah Anwar, a well-known Malaysian activist, has led to the strong position of the Indonesian Islamic women's movement, making it one of the most important ones in the discourse on Islam and women. In Indonesia, women's issues are important, and they have become part of an Islamic context. Discussions have developed in both the formal Islamic educational centers, such as the local and regional Islamic centers of learning and education (high school level; *madrasah*), the Institutes and other Centers for Islamic Higher Education (STAIN and IAIN), the Islamic University (UIN), and the more traditionally organized, informal centers, such as the elementary level, often rural *pesantren*, the local *majlis ta'lim* (informal religious teaching for women/adults), and the many informal religious discussion groups.

From some of these sometimes very modest Islamic educational centers most of the Indonesian women's movement's leaders have originated, many of whom are also activists in the national Islamic organizations. They received most of their education in the *pesantren*, the oldest and conventional Islamic educational centers. *Pesantren* are usually organized on an elementary- and/or high school level; they can be boarding schools, sometimes co-ed, and exist both in rural and urban communities. This is quite an unusual situation that is not often found in other Islamic countries, including Egypt—which has developed as one of the most influential intellectual Islamic centers in the world. The close relation in the discourse between Islam and the women's movement has become even more intense through the efforts and extensive information of the Islamic organizations that are active in the field of women's empowerment, such as Fatayat-

Muslimat (women's youth groups of the mass organization NU), Aisyiyah (women's organization of Muhammadiyah), the Rahima Foundation (*Yayasan Rahima*), and the lecturers of the Centers for Women Studies in Islamic higher education (*PSW-PSW Perguruan Tinggi Islam*), just to name a few.

The development of some of the basic ideas that served to support women's empowerment while using religious arguments in Indonesia was strongly influenced by the International Population Conference held in Cairo in 1994, and they were first formulated in a programme known as *Fiqh Annisa* from the Indonesian Society for Pesantren and Community Development (*Pusat Pemberdayaan Pesantren dan Masyarakat/ P3M*).<sup>1</sup> *Fiqh an-Nisa* was set up in regions with many *pesantren* throughout Java and Madura. Instrumental in setting up this programme were the efforts of Lies Marcoes Natsir and Masdar F. Mas'udi.<sup>2</sup>

However, implementing the insights we have gained which are based on the close relation between Islam and women's empowerment is still too often directed at an audience that consists of members of formal Islamic organizations, and using programmes that are mainly aimed at the members (associates) of their own networks. Or, in other words, our growing understanding of the connection between women's issues and Islam continues to be limited to those who are receiving or have received an Islamic education, as in the *pesantren* communities and other Islamic organizations. Worse still, these efforts only affect those who are active in the field of religious education and only a few other locally respected people, such as the heads of local or regional Islamic educational centers: the *Kyai* (traditional religious leaders) and *Nyai* (woman religious leaders), the teachers and lecturers (*ustâdz* and *ustâdzah*) of the *pesantren* and the institutes for Higher Education, activists from Islamic organizations, the *muballigh* and *muballighah*, and some of the government officials who are professionally involved in religious matters; the latter include for instance the officials in the marriage- and educational divisions of the Department of Religion. On the other hand it is nearly impossible to address women's issues without touching upon religion (i.e. Islam). Although many activists in the field of women's empowerment have an Islamic educational background, certainly not all of them do, or have a basic understanding of Islam and women's issues.

In order to address this imbalance The Fahmina Institute in Cirebon, Indonesia has taken the initiative to introduce "Islam from women's perspectives" to those who don't have an Islamic educational background. Especially we wish to address all of

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<sup>1</sup> *Fiqh*: 'jurisprudence', 'legal matter'; *an-Nisa*: women: 'Legal matters pertaining to the position of women', or 'the legality of (the role and position of-) women.

<sup>2</sup> See: Jajat Burhanuddi et. Al. *Tentang Perempuan Islam: Wacana dan Gerakan*, (2004: Gramedia, Jakarta), pp 113-152.

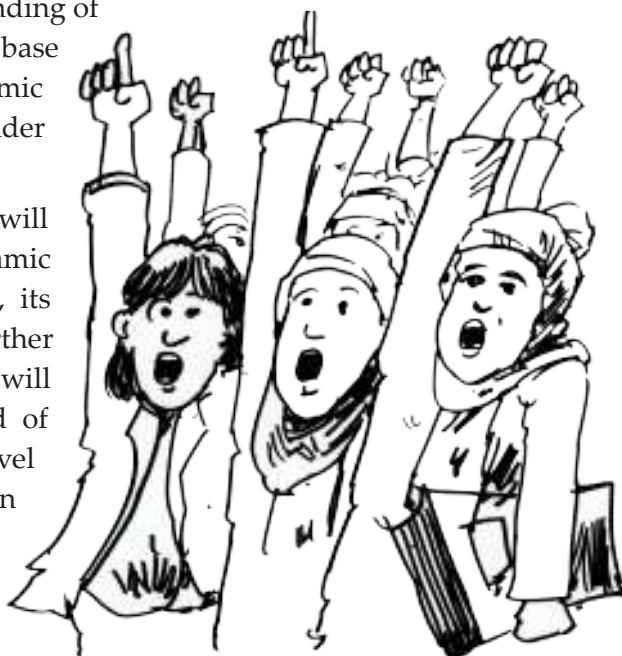
those who are involved in the movement for greater gender equality.

### *Why women activists?*

Islam in Indonesia occupies a highly strategic position. Firstly most of the population adheres to Islam; and Indonesia has one of the largest populations in the world. Secondly it is a generally accepted view that Islam is able to provide answers to most of society's problems. Thirdly Islam is believed to be an educational system which can has the potential to influence to develop an ever more civilized world order, which is humane and just. In short, Islam is a crucial factor in implementing any form of social change in Indonesia. This does not only include structural and/or political change, but particularly socio-cultural changes, including the various paradigms, moral and ethical norms and values and teachings that have shaped our current ways of thinking and acting in society.

In this context it is not surprising that many activists, particularly those who do not have an Islamic educational background, experience difficulties in addressing an Islamic audience. Even more so in times when Islam seems to be growing more powerful, like presently. It means that any activist should really be looking deeper into the issue of religion, particularly Islam, and even more specifically the relation between women's issues and gender equality. Here lies the relevance for gaining more knowledge of Islam, because strengthening one's understanding of Islam will subsequently supply the base for a 'building of knowledge and Islamic interpretation', supported by gender equality.

The texts for this course will introduce an investigation into *fiqh*, Islamic jurisprudence, rules and regulations, its main sources, its earliest ideas and further developments. In order to do so we will use a gender equality-based method of understanding, which at some level includes the deconstruction of certain biased interpretations and knowledge of Islam - the latter might prove to be the most important step yet.



### *What does 'dawrah fiqh concerning women' mean?*

'*Dawrah Fiqh concerning women*' is the term Fahmina uses (in Indonesian) to refer to this particular type of teaching, based on the words *dawrah* and *fiqh*: it is a text- or handbook for a course on Islam and gender, which wishes to take its audience along to read and to understand Islam from a women's perspective, and at the same time introducing gender equality from an Islamic textual viewpoint.

Literally *dawrah* means turn, or circle: in Arabic it usually refers to a type of education outside the more formal context of a conventional school. Therefore our *dawrah* ('course') introduces an educational model, including methods, techniques, ways, curriculum and participants that is very different from the usual, formal educational models. '*Dawrah fiqh concerning women*' refers to a specialized course on Islamic teachings from a women's perspective. We use the term *fiqh* (law/rules; jurisprudence), because what most people understand to be Islamic concepts have in fact for a long time been legal rules and regulations, based on the *ulama's*, the religious scholars' individual interpretations and judgements, which they have based on the most authoritative sources. *Fiqh* here also includes the interpretation of the Qur'ân's texts and the *hadîth*, texts ascribed to the prophet Mohammed, but also some of the subsequent interpretations that connect them with the demands of a greater rationality and a better understanding of their context.

The term '*fiqh concerning women*' has three meanings. First of all it refers to the religious and ritual rules and obligations ('laws') that concern women and women's cases. Secondly it refers to rules and regulations that support women's lives, and which are regarded as part of women's empowerment (i.e. *fiqh* from a women's perspective). Thirdly it can refer to all those rules and regulations, or compilations of them, written by women. In this publication we concentrate on the second meaning, i.e. jurisprudence, rules and regulations from Islam that serve as a means for women's empowerment. However, all three different – though intimately connected – levels will be presented in this publication: a special (-ized) course on Islam and gender.

Particularly for all of those who are interested, but cannot participate in the trainings, we take the opportunity here to explain and present in detail some of the main ideas, the method, the separate steps, the supporting materials and the articles that lie at the base of the discourse of Islam and women's perspectives. After all, this publication also serves as a guideline, a handle for those who wish to organize such a course themselves, specifically those who do not have an Islamic educational background. For all of those who have been able to participate in one of our training sessions we hope that there will be a thorough understanding of this crucial basic principle of Islam, i.e.

gender equality, and that this will be applied in their daily activities, individually as well as professionally.

'*Dawrah fiqh* concerning women' touches on most of the theological problems facing the women's movement, especially in Indonesia, based on the knowledge of religion, i.e. Islam as it is taught in the *pesantren*, the Islamic elementary (boarding-) schools. This is motivated bearing in mind that in most regions of Indonesia education as it is organized by and in the *pesantren* is still the main point of reference for the people's understanding of Islam. Therefore in this publication too we more or less follow the educational model as applied in the *pesantren*. This means that in this publication we begin with texts of the Qur'ân, then move on to some of the *hadîth*, followed by *fiqh* (legal-) texts, to a discussion of the socio-political situation in the Arab world, first as seen from a historic context, and then a contemporary point of view. We finish with the political context of Indonesia in relation to the discourse of Islam and gender.

The material is therefore divided in three parts. First we present texts that are closely related to the main principles and sources of *fiqh*, including some of Islam's basic concepts, interpretations of the Qur'ân, and the meaning of some of the *hadîth*-texts. This is followed by texts on some of the earliest ideas that are the basis for *fiqh*, and which include explanations on the relation between the early Islamic traditions and the development of religiosity, *fiqh* as a scientific discipline, and *fiqh*-texts that concern the life of women, according to the interpretation and judgment of the *ulama* (religious scholars). Finally texts related to the implementation of *fiqh* in an Indonesian context are presented, addressing matters such as the Marriage Law and the compilation of Islamic laws.

Here, in this publication we will not further explain the definition, role, or relevance of the concept of gender because we assume that the readers already have a basic knowledge of it. There are various other publications that address this issue, like the one from Women Research Institute (WRI) and Fatayat NU, to name but a few.

### *A word on methodology*

The course as presented in '*Dawrah fiqh* concerning women' is based on educational methods as these are being used for adult education. Thus each participant is expected to have his or her own experiences, which support each student to act as an expert or reference, albeit a modest one. In some other ways too, besides focussing on experience, such as role play and group discussions, the participants' experiences are made to surface. The students, or participants, interact with each other, sharing ideas as well as reading material, knowledge, and experiences. This approach is based on the specific

educational principle, which is aimed at developing a student's critical awareness. This approach very successfully creates a sense of equality and egalitarianism among the various individual students, notwithstanding their personal, social, and cultural differences; at the same time it minimizes the dominant role of a facilitator, an expert, or some of the others, who might think themselves to be better – perhaps because they are more powerful, or richer, or have a higher social position.

'*Dawrah fiqh* concerning women' is based on a philosophy of teaching that is open, free, and democratic. It is sometimes known as a learning system which aim is to set free, and has developed as a critique of the more traditional ways of teaching, which cannot avoid putting restrictions on a student. It rejects methods of learning where students are expected to be passive and obedient to a teacher, and instead aims at developing a critical attitude.

Here the function of a facilitator is likewise limited to providing the necessary facilities, to support creating an atmosphere for free and independent learning. The facilitator acts as a motivator, so that relevant experiences are shared. Together there is an effort to arrive at a clear, but critical viewpoint, and in our case this must concern the question of equality between men and women. We have therefore formulated three basic points for introducing a critical way of learning, as a minimum condition for any facilitator. These are:

- To learn from facts and experience;
- Not to teach and not to preach;
- To concentrate on creating a dialogue, not a monologue.

The most important part of the educational model for successful adult education lies in its technique to process a course. This is influenced by the particular view on education, in combination with a firm participatory approach. It needs a structured learning cycle, which is consistently applied at every stage of the course or exercise. It can be illustrated as follows.



*First step:*

As a first step the participants and the facilitator (-s) do an activity together to establish a common experience. This can be in the form of role-play, discussion, watching a film (relevant topic) together, listening to a lecture, or some other ice-breaker. This activity is mainly concerned with gathering some first hand, initial (or 'raw') data.

*Second step:*

This is followed by the next stage in the process, which focuses on formulating the data.

Each participant is invited to express an experience they once had, either recently or not so recently. The facilitator should pay special attention here to some of the quieter participants, so that they too are involved in expressing their feelings. Next the various experiences are written down; this information can now be used as material for further analysis.

The facilitator discusses and presents the material (data) obtained from the participants, making a selection and ordering the various topics/experiences according to the subject that was set as a theme for this session. In this part of the process the participants as well as the facilitator(-s) can still put forward new data; this could be additional information, or comparing and/or contrasting it to some of the participants' other, more personal experiences.

***Third step:***

This step involves analyzing the data based on the material presented by the participants.

Here the facilitator (-s) ability to analyze data becomes important. To obtain a firm base to do this, the facilitator(-s) may, and indeed should make connections between the information obtained in this session and other information, based on experiences from outside the training context, maybe from the facilitator(-s) or the participants' own background or environment. It is also possible to invite a separate speaker for this particular part of the activity, who has similar or comparable experiences or relevant knowledge.

***Fourth step:***

This stage involves formulating a conclusion. This is a summary, which might be a general conclusion, or just one or more point (-s) that needs to be emphasized, as a viewpoint or opinion that is shared by all the participants.

***Empowerment of the participants:***

In a course on gender and Islam that uses an educational model based on the structure described here, the conclusions that are formulated are not provided by the facilitator (-s) or the speaker/expert, but are elicited and compiled from among the participants. It is a form of interaction that empowers the participants (who are also the 'students'). This is not an easy approach, particularly for those of us who are used to the tradition of either dictating others, or being dictated (by others). Here we need a great deal of patience, just to guarantee that we are not falling back into the pattern of dictating, in this case the participants' opinions. On the contrary, we should encourage them to formulate and to express their own feelings, their individual opinions and ideas, so that the participants themselves become our main frame of reference, and source of experience and knowledge.

This activity starts from the concept that in principle all participants have their own knowledge, experience, and opinion (in this case: on women's issues). It might be based on one's understanding of religion, particularly *fiqh*, or one's concrete experiences-being a woman. Knowledge and experiences of each participant differ from those of others, even though one could have the same religious denomination, come from the same region, or even the same family. Therefore expressing those individual experiences will result in a rich weft of data.

The dialogue we like to establish in this course is based on the viewpoint that women know best about women's issues. This is in turn based on the idea that a woman's experiences are partly played out through the body, and partly through interaction with others, outside the body.

Even though we regularly require the assistance and input of experts, their role is seen as complementary. They are certainly not expected to present the 'one and only view that explains all'. To avoid this, the course provides many opportunities for discussion and clarification. The role of the facilitator (-s), in turn, is to guide the discussions along, to make sure that a discussion happens, and to make sure that there are one or more main points which can be formulated, as a communal effort ('conclusions').

Besides the facilitator (-s) other tasks it is also suggested here that in support of making the dialogue happen enough reading material is provided. This should include material on specific topics, such as reproductive health, religious matters, and of course examples from case studies, which are crucial for opening up the participants to have further discussions. However, this will also give the participants control over some of the topics that are being addressed, so that the knowledge of a certain topic is not limited to the invited expert and/or the facilitator (-s), but is available to the participants too. Another reason for compiling the reading material is that it is good to have it all put together, because on some of the topics the reference material is still very limited.

Another characteristic of the approach taken here is to refrain from introducing a topic with a complicated, abstract, theoretical explanation. Instead we start from concrete examples and facts. Some of these facts should be provided by the participants themselves, who are talking from- and sharing their experience. The next step is that these will be analyzed on a macro level, in order to become part of a collective experience, involving all the participants. This we can do by either formulating the similarities or the opposites from the previously apparently unrelated experiences.

The narratives will be personal, and often emotional – but this should not be a problem, because this in itself it will usually trigger very useful reactions from the other participants. Of course here lies the relevance (and the skills) of a facilitator, who must guide the process along, without knowing beforehand which direction this activity will take. Most importantly at this level is to lift up the personal and the specific to become the general and collective, and formulating it in such a way that it will become data for further argumentation; this can be on topics such as polygamy, violence against women, women's leadership and so on.

Besides focussing on personal, specific experiences, it is also important to create space for the participants to express their hopes (for the future) and their fears. Of

course, in dealing with some of the more sensitive issues, particularly those related to religion, this will not be easy, and it might not be possible to express these feelings and ideas freely and openly. Therefore one could make a box or another special place for participants to put their suggestions in to, or even just their notes on a topic which they find difficult to address more openly. The facilitator(-s) could later take a look at these notes; these might be used later as complementary course-material and/or material for further interaction among the participants, or part of new reference material, or even part of the material that is being addressed by one of the invited experts.

### *How to use the course*

Writing the *dawah*-course could only take place because it is based on our experiences organizing women's activists training sessions. At the start the course was designed as an arena for reflection on theological and praxis views, a meeting-point for those who are daily involved in supporting the women's movement and those whose activities are mainly part of *pesantren*-tradition. This is why the organization, particularly the facilitator (-s) and the invited experts should preferably have a solid scholarly *pesantren* background. The course itself is set up in such a way that it is easy to understand, ready to be used by anyone, particularly those who wish to organize a course on Islam and gender, or '*dawah fiqh* concerning women'. The explanation of the course's process is based on the outline of an adult education-approach and material relevant to the issue of Islam and gender.

In order to guide the readers through the material and to make it more easily accessible, we have organized it as follows:



#### **Title:**

This term points to a major theme such as 'Basic concepts of Islam'. There are seven of these major themes, which should be read in their entirety. The material is well organized and presented in an orderly way, avoiding giving the reader problems in following the thoughts and ideas presented in it. The seven main themes can be classified in three course-outlines: i) The sources of *fiqh*; ii) Early ideas on *fiqh*; and iii) The implementation of *fiqh*.

The first major theme, 'sources of *fiqh*' includes three different sub-themes: basic concepts of Islam; the Qur'ân and interpretations regarding women; and using *hadîth*-texts from a women's perspective. The second

major theme, 'early ideas of *fiqh*' uses historic references on the situation in the Middle East when Islam had only just begun its development as a major religion: *fiqh* in this part is presented from a women's perspective and we concentrate on describing *fiqh* as it has influenced women's life cycles ever since. The third main theme, 'the implementation of *fiqh*' consists of one sub-theme, namely Indonesian Islamic law as seen from a women's perspective.



### **Objective:**

This is the goal one tries to reach, the target one aims for the participants to arrive at. In this publication the main aim is to reach an understanding, but one in which there is empathy and an awareness of gender equality.



### **Points for discussion:**

These are the concise explanations of the units that are based on one theme, including the aims one tries to reach.



### **Method:**

This refers to the way one teaches, or the approach taken in the process of teaching. The method should as often as possible be varied, interesting, and leave enough space for the participants' experiences to be presented. In this course much of the material is presented by an expert and supported by reference material. However, the facilitator (-s) should be able to present the material when and if an expert is not available, accurately referring to the relevant material or articles, and following the manual's outline. However, any facilitator has a great deal of freedom to present the material as he or she wishes or sees necessary, making modifications and/or adapting the material – as long as the main aims remain clear, i.e. a strong focus on experience, and firm concentration on the support for gender equality as found in Islam.



### **Tools:**

Here we mean all the additional tools, or media needed to guide along the process of teaching. Some of these are standard, such as a meta-plan, a

piece of sticky cloth, markers, plain paper, and sticky tape. Other materials need to be manufactured beforehand, such as extra photocopied material and/or hand-outs, examples, different types of diagrams, pictures.



**Time:**

Here it is important to define the term ‘effective time’, which refers to the amount of time one actually needs to get something done (as part of the overall process, or separate session).



**Steps:**

This refers to the order of the process that a facilitator applies in organizing throughout the teaching process at every (sub) division of the material. The separate steps include inserting questions to ask the participants, as a general outline for- or to trigger a smooth continuation of the material and reaching the goal one aims for.

As formulated here, in order to get through a fairly complicated course as this, one needs between 36 to 40 effective working/studying hours to finish it in good order. This means that a course based on the approach and the material presented here should take at least between 4 to 5 days. In order to obtain a maximum result from the participants’ dynamics one should limit each course to 25 participants. Or, when this is unavoidable, set a limit of 30 participants.

Of course, this publication can only formulate a general outline for organizing a successful course on Islam and gender and it can not, *per definition* present a final version. For depending on the times changes are bound to occur: the material will change, audiences will change, and there are changes in society as a whole. Therefore the facilitator(s), the organization, even the experts will be able and are partly expected to implement changes when and if this seems necessary.

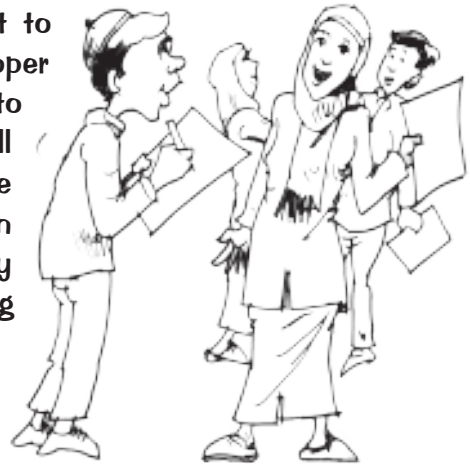
And of course this can also only take place as long as it is done within the context of an interpretation of Islam that supports gender equality, and with an overall approach that is fit for adult education.

# Introductions; Identifying the Issues 1





**I**ntroductions are important. Not only to get to know each other, but also to create the proper atmosphere. Introductions can be a way to find the entry points for the themes which will be discussed. It can even out the otherwise hierarchical relations governing our communication outside the context of the course, and it is a way to guide the participants towards a proper setting to follow the course on Islam and gender.



It is also very useful in creating an atmosphere of dialogue: the participants are expected and actively invited to express themselves freely, presenting opinions, questions, or just a (dis-)agreeing remark. The participants are made aware that they are expected to be actively engaged in the whole process, and that communication is supposed to take place not only from a speaker (lecturer) to the audience, or from the speaker to the audience and back to the speaker, but in a multi-directional way, like the arrows in a compass, and involving all who are present.

In order to create a participatory atmosphere, the facilitator should be able to define the proper setting for the participants' learning experiences, where studying, analyzing, and formulating conclusions is highly appreciated. The participants should feel free to express themselves. They should not only be open to the opinions and ideas of others, but also to open up themselves and feel comfortable in sharing their own feelings and ideas with others. One-way to achieve this is to hold an extensive, yet focused introduction round.

Even though it might seem a limited part of the overall course, the introductory round is really very important. It is the only way to create a supportive and conducive atmosphere, where the participants don't feel inhibited too share and open up and where there is ample space for study, learning, analyzing, and sharing opinions and ideas. Because when we don't establish this atmosphere of openness, making the participants feel valued when they communicate freely, it will easily have an adverse result – in that case the communication will not flow freely during the sessions, and the atmosphere could get too formal, even tense. This is counterproductive and will obstruct one of the course's main objectives, which is its participatory approach.



## OBJECTIVES

- To create an intimate and communicative atmosphere;
- To create a sense of equality among the participants;
- To establish the conditions for group dynamics;
- To formulate clearly the boundaries of the topics that will be discussed during the course, particularly the theological issues which will be discussed by the participants.



## POINTS FOR DISCUSSION

- Preparations to create a fitting atmosphere for the course;
- Issues/topics of the course;
- Identification of the theological points based on the participants' experiences, both as a member of one's family and as an activist who has to face religious views/opinions in the field.



## METHOD

- Sharing experiences;
- Discussion



## TOOLS

Coloured cards, sticky cloth, markers (as many as there are participants), plain paper, cello tape.



## TIME

120 Minutes.



## STEPS

1. Invite the participants to introduce themselves;
2. Ask the participants what they think is the use of such an introductory round and what points they think should be mentioned in an introduction. Emphasize that an introduction should in fact only consist of some basic information, such as: name, institutional background, educational background, hobbies (if any), and region;

3. Continue to carry out the introductions;
4. After this is finished, try to summarize the similarities and differences between the individual participants;
5. Question-round: ask the participants which of the problems they face do they think originate in Islamic teachings;
6. Invite the participants to re-arrange themselves and sit together in small groups, based on a similarity of problems/issues they have to address in the field and which can be traced back to Islamic teachings;
7. Invite every group to present itself and its 'core issue';
8. The facilitator writes down which topics are being presented by the various groups and their connection with theological issues;
9. Write down the most important conclusions from this session, so that they can be used in the next session. The issues should be relevant to this Islam and gender-course. It might be possible to categorize them in 4 themes:
  - Violence;
  - Reproduction;
  - Sexuality;
  - Leadership or politics.



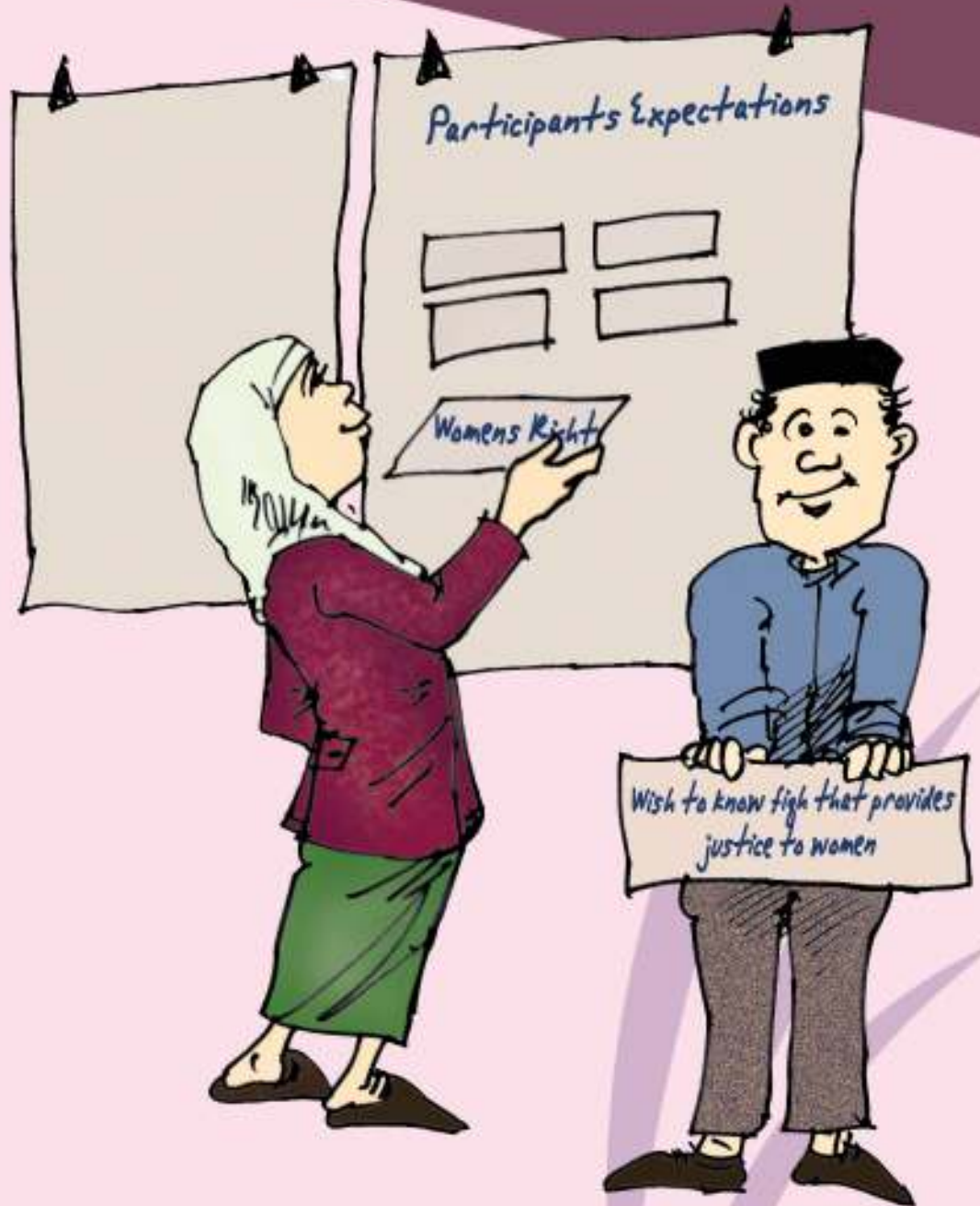
***Notes for the facilitator:***

- √ *The introduction round could be done using other techniques, as long as it focuses on **introductions**, and on creating a supportive, comfortable atmosphere where the participants feel that their experiences, remarks, and opinions are valued. Yet this should always also have relevance to the theological issues addressed by the participants.*

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ  
عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيَطِيعُونَ اللَّهَ وَرَسُولَهُ  
أَلَيْسَ سَيِّرُهُمْ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ

“... The believers, men and women, are each other’s protectors;  
they enjoy what is just, and prohibit what is evil:  
they observe regular prayers, practise regular charity, and  
obey Allah and His Messenger. On them will Allah pour His blessing:  
for Allah is exalted in power, wise... ”.  
(QS. Al-Tawbah, 9: 71)

# Hopes and Fears 2





**F**irst beginnings can often turn into something important and definite. In this course it is best to agree upon some of the technical aspects of the course in the very beginning. This includes discussing the schedule, rules-of-the-game, and main topics, as well as the general direction for each session, which will subsequently become a basic guideline in the next. Although they seem technical matters, to formulate clearly what needs to be done and how to go about doing it is, in adult education, a matter of principle. Besides, it gives an opportunity to bring the study/reference material in tune with the participants' interests (which is itself part of the course's material).



In this educational model it is not recommended that the facilitator and the members of the organizing committee totally define the needs and processes used in the course. However, the facilitator, in co-operation with the organization will present initial guidelines for whatever it is that is needed in the course. Of course this should be discussed with the participants first before it gets implemented. By way of sharing opinions the facilitator should also try to elicit the participants' expectations, and try to define what it is they hope to gain from the course. At the same time, besides expressing their expectations, the participants are also asked to formulate their worries, topics which they rather wish to avoid – try to elicit the reasons why.

Expectations and fears which are more technical can subsequently be made to serve as part of the course's guidelines, or rules-of-the-game. Issues that have come up in relation to the study/reference material could, when the participants agree, become more integrated, as outlines for the course's themes, material, and further method and approach.

However, if there is not so much time the facilitator can propose the schedule that was set up previously (before it got discussed with the participants). Often a schedule that has been successfully implemented before can easily be used again, without having to make too many adaptations of the participants' needs. But when there is enough time set apart to do this, it is definitely better to spend some time on formulating the participants' needs for specific material, especially when this is based on personal or individual day-to-day experiences – as long, of course, this is still connected to one of the course's main objectives, i.e. the theological problems encountered in the Islam and gender-theme.



### OBJECTIVES

- To identify the participants' needs;
- To agree on 'technical' matters such as (study-) material, time, schedule, and rules to play by;
- To make the participants aware of- and get used to be actively involved in a participatory approach.



### POINTS FOR DISCUSSION

- List of participants' needs and expectations;
- List of the participants' fears (topics to be avoided);
- Agreement on (study-) material, time, schedule, and rules to play by.



### METHOD

Brainstorming, group discussion, plenary discussion.



### TOOLS

Coloured cards, sticky cloth, markers as many as there are participants, plain paper, cello tape.



### TIME

60 Minutes effectively.



### STEPS

#### *Understanding the participants' expectations:*

1. Distribute the coloured cards/pieces of paper to write on among the participants;
2. Ask them to write down three things they hope to obtain from this course; each of these they should write on a separate card/piece of paper;
3. Ask the participants to stick their cards/pieces of paper on a

- designated place on the sticky cloth; or immediately go to step 4:
4. Divide the participants in 2 groups;
  5. Ask the members of each group to classify the various topics, and put the cards/pieces of paper together according to the topic on the sticky cloth, while presenting and clarifying them;
  6. Together with the facilitator the participants try to formulate conclusions.

*Discovering the participants' fears:*

7. Do this AFTER mapping the participants' expectations (step 1 – 6);
8. Ask the participants to form a circle, while the facilitator stands in the middle;
9. Explain the participants that this is part of identifying the topics they wish to avoid;
10. The facilitator now reads several statements on gender and Islam, and asks the participants to make their position clear on how (un-) easy they feel about the issues as formulated by the facilitator;
11. The facilitator mentions the first topic, for instance women's political leadership, asking how (un-)comfortable the participants feel about this: those who don't feel uncomfortable will take a step forward and stand nearer the facilitator in the circle, while those who do feel uncomfortable take a position further away from the facilitator;
12. The facilitator repeats this several times, using different topics. Sometimes the participants can be asked to present such 'uncomfortable' topics;
13. After the last topic, the group makes an inventory of issues that were either less or more controversial; the facilitator tries to elicit the reasons why the participants feel more or less (un-)comfortable;
14. Finish this part of the session by concluding that talking about religion in itself is something that often makes people feel uncomfortable: therefore in the course there should be agreement between the participants on how to address it, while feeling comfortable, and how to discuss some of those other 'problematic' topics without feeling uncomfortable;
15. Explain that it is normal for people to feel uncomfortable when

discussing religion. To overcome this, the organization has placed special boxes ('FEAR BOXES') in different places where the participants can, incognito if necessary, deposit their remarks or opinions just in case talking about their 'fears' in the group is too difficult;

16. End of the activity. (This method is adapted from the manual 'Workshop Advanced Training on Syariah Law, Gender and Human Rights' by Sisters in Islam, December 2005).

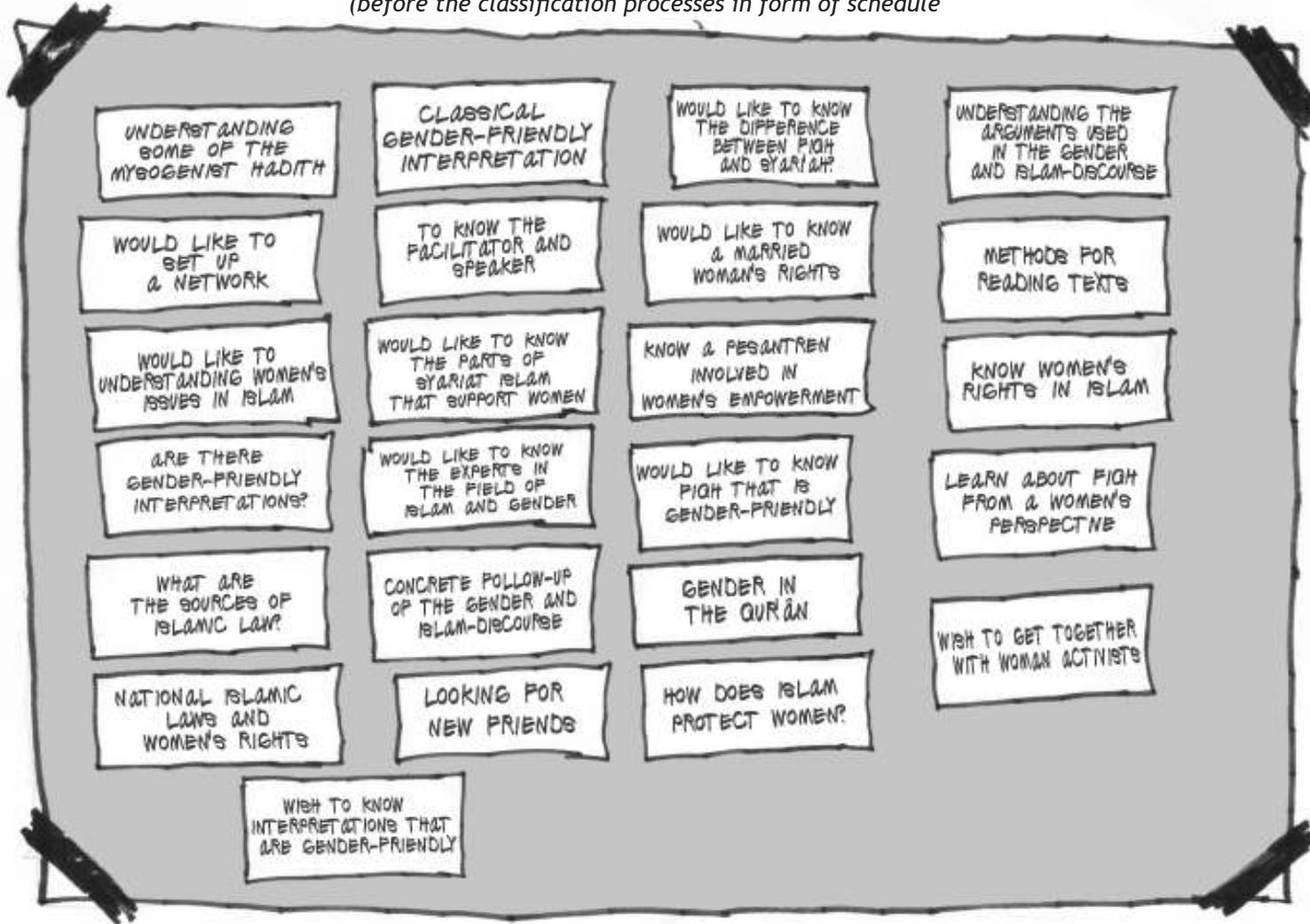


### **Notes for the facilitator and/or speaker (expert)**

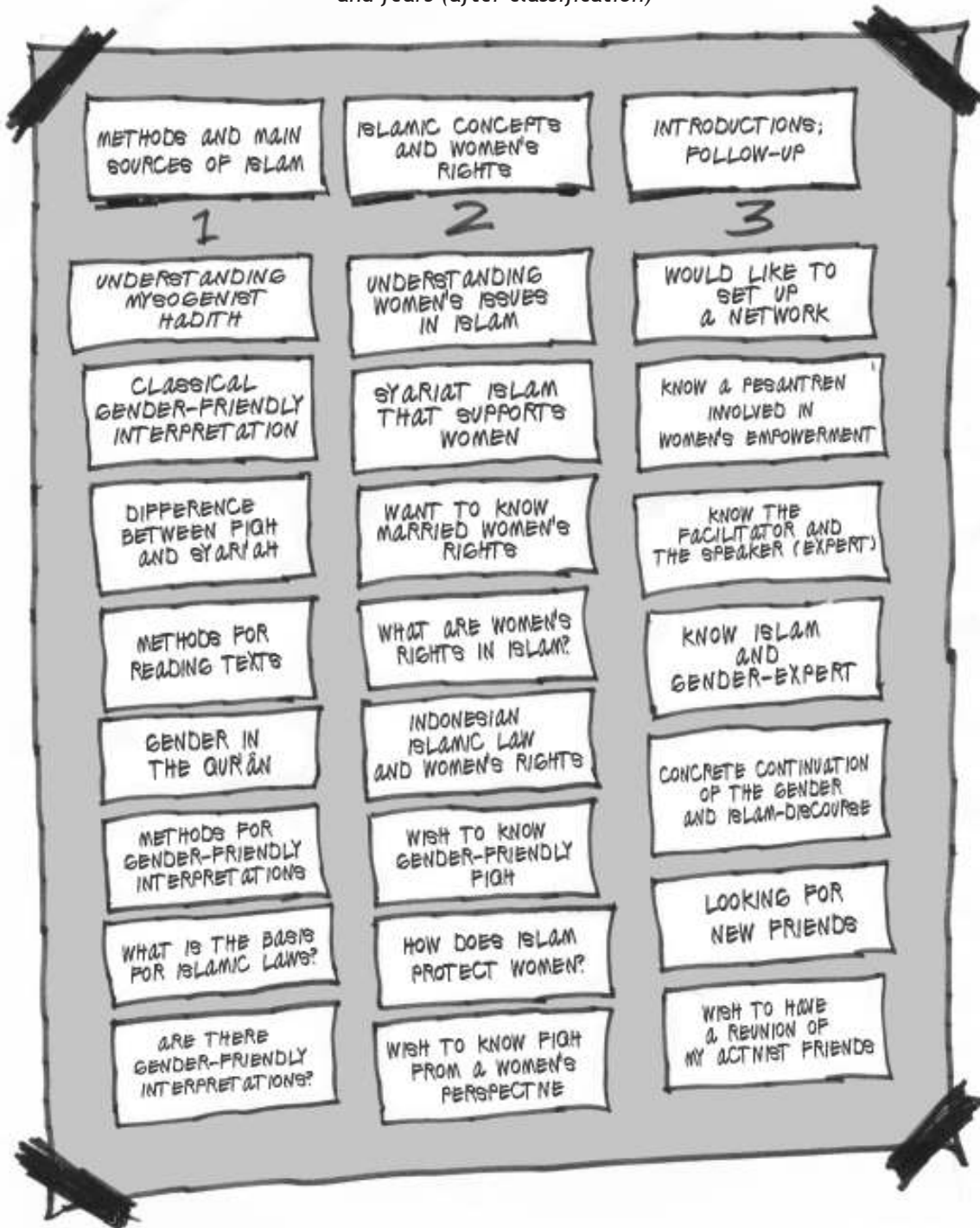
- ✓ Sometimes too little time is taken to this activity, because the facilitator/organizers think that formulating such a needs (and fears-) assessment will create an undesired distance between the objectives of the organization and the participants. However as long as the facilitator/organizers do not force their own opinion on the participants this is unlikely to occur.
- ✓ To avoid creating an imbalance between the objectives of the organizers and the participants it is advisable that earlier on there is a more informal round in which the participants can express their expectations. This can be done in the form of a questionnaire, or short individual talks. That is also why it is relevant during the initial stages of the course to precisely explain the aim of this activity. To do this it helps enormously to set up a reference outline. This means that the main points (outline) for the whole group to refer to are already formulated at the outset of the activity.
- ✓ When there is such an outline it is easier for the participants to have an idea of the problems/ topics which will be discussed during the course. It is also a way to bring together the objectives of the facilitator on the one hand and the participants' on the other even before the programme has started. Possible problems that which arise often concern arranging or re-arranging the time/ schedule. Time and place where to schedule it can be determined by the participants, because when they think the activities of this course are relevant, they will be able to arrange their schedule in such a way that they can successfully finish all the activities.



Illustration 1:  
Example of a meta-plan of the participants' expectations and fears  
(before the classification processes in form of schedule



**Illustration 2:**  
Example of a meta-plan of the participants' expectations and fears (after classification)



**LIST OF POSSIBLE QUESTIONS  
TO ASSESS SOME OF THE MORE 'PROBLEMATIC' TOPICS  
THAT THE PARTICIPANTS MIGHT FIND UNCOMFORTABLE:**

- ~ *Do you feel comfortable when discussing the history of the Qur'ân?*
  - ~ *Do you feel comfortable when analyzing the texts of the Hadith?*
  - ~ *Do you feel comfortable when discussing the construction of fiqh (Islamic religious rules and regulations/Islamic jurisprudence)?*
  - ~ *Do you feel comfortable knowing that fiqh are formulated by humans, and can therefore be subjective and relative?*
  - ~ *Do you feel comfortable talking about the rights and responsibilities between husband and wife?*
  - ~ *Do you feel comfortable discussing the occurrence of violence against women in the name of religion?*
  - ~ *Do you feel comfortable discussing women's sexuality?*
  - ~ *Do you feel comfortable in this meeting room talking about feminism?*
  - ~ *Do you feel comfortable in this meeting room talking about mixed religious marriages?*
  - ~ *Do you feel comfortable in this meeting room talking about deconstructing Islamic teachings?*
  - ~ *Do you feel comfortable in this meeting room talking about lesbian and gay men and women?*
  - ~ *Do you feel comfortable in this meeting room talking about HIV/AIDS?*
- ..... and so on: the questions and topics can vary according to the needs of the participants in the course.*

فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِّنكُمْ  
وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَلِكَ يُوعِظُ بِهِ مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا ﴿٢﴾  
وَيَرْزُقْهُ مِنْ حَيْثُ لَا يَحْتَسِبُ وَمَنْ يَتَوَكَّلْ عَلَى اللَّهِ فَهُوَ حَسْبُهُ إِنَّ اللَّهَ بَالِغُ أَمْرِهِ قَدْ جَعَلَ اللَّهُ  
لِكُلِّ شَيْءٍ قَدْرًا ﴿٣﴾

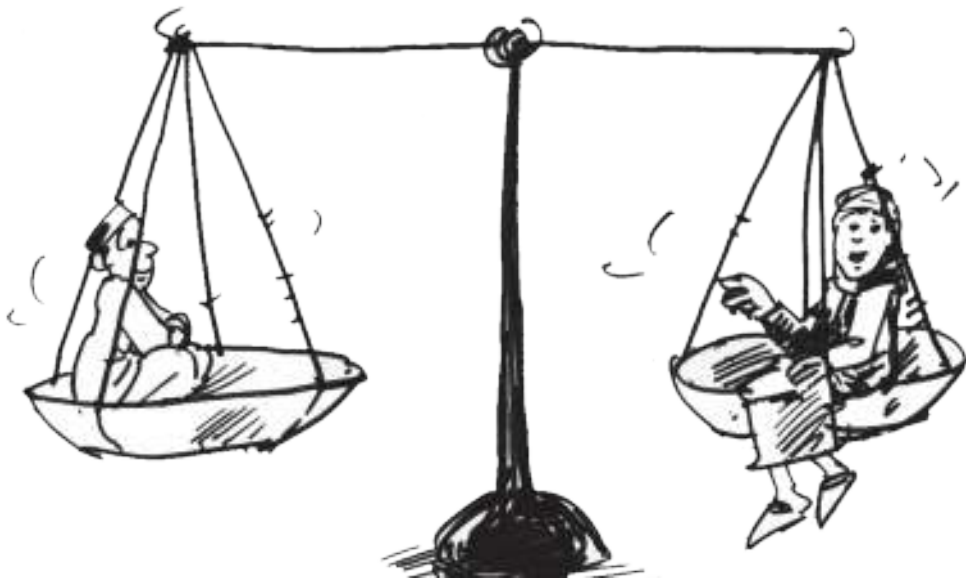
“... When they (women who are divorced) reach the end of their period of ‘iddah, treat them well or just set them free in a proper way and give testimony with two fair witnesses from among you, and please support the testimony because it is before Allah. This is the lesson given to those who are devout and believe in Judgment Day. Whoever devotes themselves to Allah, He will surely show them a way out. (2) And provide prosperity from an unexpected direction. And to whoever trusts in Allah (their needs) will be provided for. In all truth Allah does what He needs (that He wishes) to be done. In all truth Allah has taken care of everything (3)...”  
(QS. A-Talâq, 65: 2-3).

# Basic Concepts in Islamic Teachings 3





**T**he following material focuses on the idea that Islam does not only concern formal rituals; that it also involves more than just a collection of holy texts or various rules and regulations, which exist without- or separated from their context. The material presented here tries to point out that Islam is a religion which harbours some strongly humanist aspects, liberation, and independence, and the enforcement of justice. And that these are the essence of Islamic teachings. The social teachings of Islam are illustrated in Islam's three basic concepts. These can be seen in the basic concepts of Islamic teachings which are: tawhîd (monotheism), prophetic mission, and khilâfah (the concept of our human mission to establish God's realm on earth according to Islam, which is seen as one of our basic tasks on earth).





#### OBJECTIVES

After having studied the material presented in this part, the participants are able to...

- Recognize and understand some of the more abstract, but basic terms from Islam, such as *islâm*; *imân* – faith; *ihsân* - doing well (charity); *nabiy* - the role and efforts of the prophets; *wahyu* - divine revelation: the way the Qur'ân was handed down to us; *rasûl* - God's earthly messenger: the Prophet; *hanifiyyah* – true believers.
- Talk about Islam's basic mission: to establish a monotheist religion, establishing justice, solidarity, equality, being merciful, creating benevolence;
- Understand that the concept of *tawhîd* (monotheist perspective) is the basis for a transformation in the field of social justice;
- Understand the concept of our basic mission on earth according to Islam (*khalîfatullâh fiy al-ard*);
- Make a connection between the principle of gender equality and the three central Islamic concepts mentioned above;
- Understand that establishing a greater level of gender equality is actually no more than part of the prophet's efforts and mission, and a powerful implementation, or consequence of monotheism as understood in Islam.



#### POINTS FOR DISCUSSION

- The meaning of some basic Islamic principles, such as Islam, *imân*, *ihsân*, *wahy*, *nabiy*, *rasûl*, *hanifiyyah*;
- The objectives, or mission formulated in Islamic teachings: monotheism, justice, solidarity, equality, mercy, and benevolence;
- Monotheism (*tawhîd*) and its capability (intention) to liberate humans: guaranteeing justice, solidarity, equality, and benevolence;
- The concept of *khilâfah*, i.e. the establishment of God's realm on earth according to Islam, or: human's basic role on earth;
- The principle of gender equality in relation to the concepts of monotheism (*tawhîd*) and human's basic mission on earth (*khilâfah*).



## METHOD

Sharing of opinions and analysing a reference text.



## TOOLS

Sticky cloth, markers, plain paper, coloured paper/cards, cello tape.



## TIME

5 Hours.



## STEPS

### *First stage (1 hour):*

The facilitator prepares a proper and conducive atmosphere:

1. The facilitator divides the participants in small groups (2 or 3 people), and asks them to write down on the coloured cards/pieces of paper some of the most important terms from Islam, or words that they often hear/use in daily life;
2. The facilitator tries to categorize these terms and writes them down on the plain paper. This is done according to the three main categories which are addressed here, i.e. monotheism, prophetic mission, and our messianic mission. When there are other terms which fall outside these categories, make a separate category; these must be discussed in a later session;
3. The facilitator goes over the most important terms with the participants again, as a focus for the material on Islam's basic principles. When the participants have trouble finding the right terms, or finishing their assignment on time, the facilitator can add some of the points that are considered relevant and important.

### *Second stage (1 hour):*

The facilitator prepares time and place for the speaker, who is free to convey his or her contribution, as long as it refers to the following:

4. The invited speaker/expert starts the lecture from one of the points brought forward by the participants, and explains the three basic

principles from Islam (i.e. monotheism; prophetic mission; our messianic mission) using one of the terms from the participants as a beginning;

5. The speaker should start by describing the history and early days of Islam and The Prophet Muhammed PBUH, and explaining the way in which the texts from the Qur'ân were handed down to us (as '*wahyu*': divine revelations), especially in relation to the principles of liberation, solidarity, and humanity;
6. Next the speaker presents some of the earliest texts of the Qur'ân which were handed down to us, and mentions the names of those who were among the first to support the establishment of Islam in Mecca; these are concrete examples of Islam's strong social principles and their appeal. The names should include Bilâl b. Rabâh, Sumayyah The Mother of Yâsir, and Abu Dharr al-Ghiffâri, who were at the basis of the movement for greater social solidarity and equality as formulated by Islam.
7. Following this the speaker will explore and explain the concept of our human mission on earth in Islam ("*khilâfah fi al-ard*") in relation to some of Islam's other socio-political principles. At this stage some of the texts (*âyat*) referring to the concept of *khilâfah fi al-ard* should be presented, focusing on the how-, the why-, and the idea that humans are put on earth with.

#### *Third stage (1 hour):*

8. The facilitator, or the moderator invites the participants to speak their mind; they should be asked to forward their ideas, opinions, remarks, and questions, preferably on the material and ideas presented by the speaker.

#### *Fourth stage (2 hours):*

The facilitator guides the participants' concentration towards analysis and conclusions using the following points:

9. The participants are asked to form one group, and to discuss together the answer to the question: "which principles of humanity can you find in the three basic Islamic concepts as mentioned above?" This

should take 30 minutes.

10. Next, the participants present their findings. Part of the question on humanity concerns equality, and part of the question on equality concerns gender equality: together with the facilitator the participants try to formulate their conclusions. Particular attention should be given to the answers that refer to gender equality as one of the principles in Islamic teachings. This is the major conclusion of the session on Islamic basic principles.



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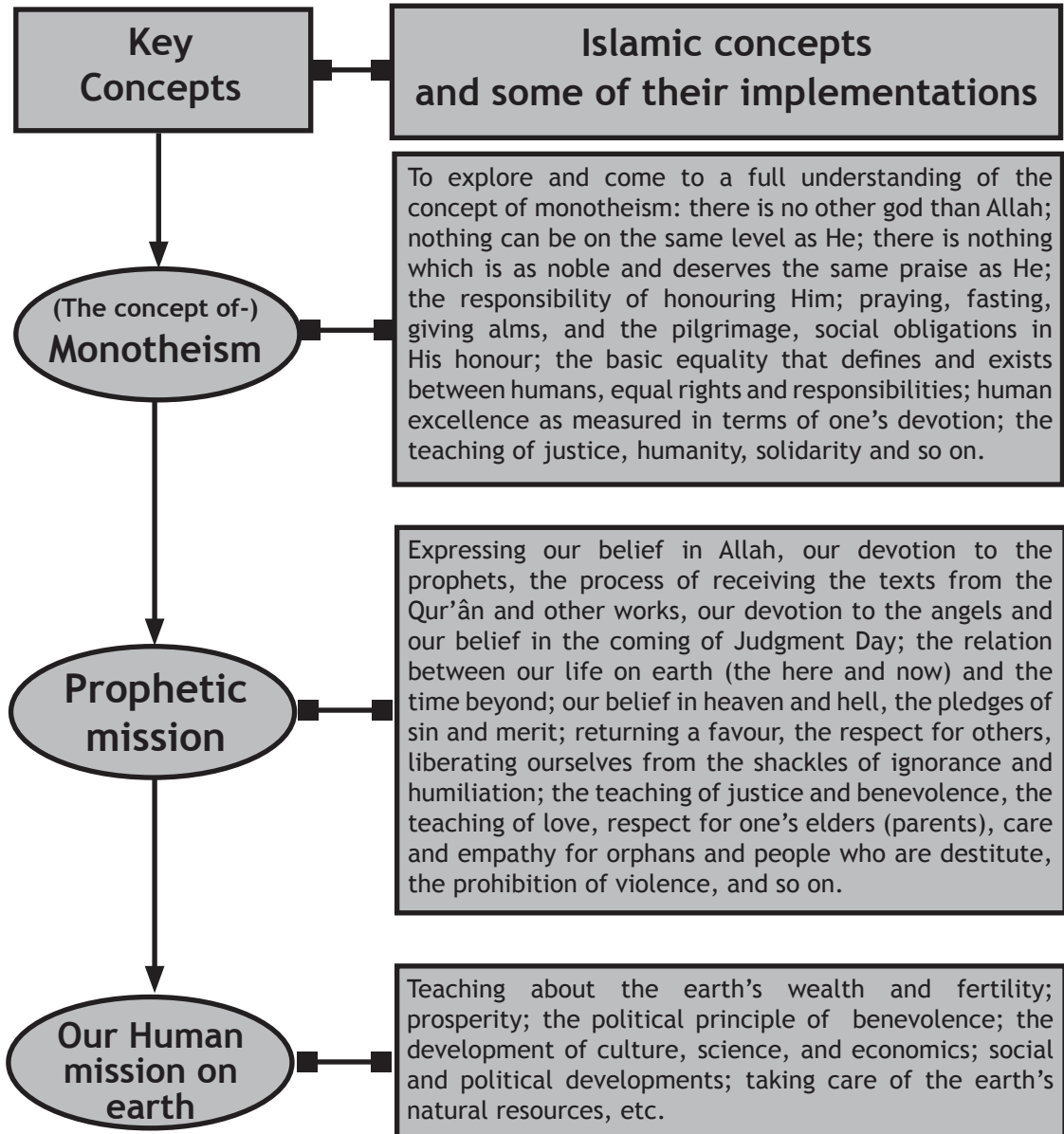


**Notes for the facilitator / speaker**

- ✓ *The key concepts to be presented by the speaker should concern the concepts of monotheism, prophetic mission and our human mission to establish God's realm on earth according to Islam, and their relation to the principle of humanity.*
  - A) *(The concept of-) monotheism refers to a belief system based on one, single deity, i.e. God or Allah. This concept has several direct implications for the relations between people.*
  - B) *Our prophetic mission should refer to the mission of the respective prophets, particularly Mohammed, and their efforts to formulate the ideas of the liberation of mankind from the shackles of servitude, imposing solidarity and equality among mankind.*
  - C) *Our human mission on earth illustrates mankind's ultimate mission to live on this earth as described in- or according to the Qur'ân; it refers to providing well-being, prosperity, and continuing life on earth, and our ultimate goal of establishing God's realm on earth.*
- ✓ *When carrying out the first step, the facilitator can begin making categories and have the participants organize all the terms according to the three basic Islamic principles, i.e. monotheism, prophetic mission, khalifah fil ardl .*
- ✓ *It is possible that the participants at first tend to concentrate on bringing forwards terms related to ritual matters. However, it is not a bad thing when this happens: it can be used to demonstrate that many people think of Islam as a highly ritualized religion, whereas the social concepts that lie behind it often do not receive much attention. To illustrate this even more clearly it is necessary to spend much time on discussing those basic key concepts of Islam.*

**Illustration 3:**

*The classification of the three key concepts of Islamic teachings*





## **Tauhid: a source of inspiration for gender justice**

*Siti Musdah Mulia<sup>1</sup>*

**T**he essence of the religion of Islam is revealed in the humanistic values it embodies. The most complete expression of those values is the recognition by Islam of the fundamental equality and unity of all humanity. All human beings are considered equal because all are equally created by God. The only thing that differentiates one individual from another is the degree and quality of her devotion and obedience to God. And the only one capable of judging the quality of human devotion is God Himself.

The ultimate goal of all religions is to provide guidance to humankind on how to become better human beings. This goal encompasses all aspects of human experience: physical, mental, moral, spiritual, and social. Accordingly, the essence of all religious teachings consists of distinguishing between that which is good and that which is bad. Religion provides human beings with guidance as to which actions are virtuous and bring happiness and which actions are sinful and lead to misery and tragedy for the sake of their own happiness and tranquillity. God, The Creator, obtains no benefit through human obedience to His revealed guidance. Conversely, God is not disadvantaged if human beings disobey Him.

A fundamental precept of every religion is the obligation to show equal respect to all human beings regardless of sex, gender, race, ethnicity, and even religion. Religious teachings therefore have two aspects: those concerning God and those concerning humanity. Islamic teachings emphasize the two dimensions simultaneously. The vertical aspect of Islamic teachings concerns human obligations to God, while the horizontal aspect deals with inter-human relationships and the relationship between humans and the natural environment. Unfortunately, this horizontal dimension is often not fully implemented by Muslims, particularly as it relates to the relations among humans.

The core and foundation of Islam is the concept of *tawhîd*. Tawhîd is the basis for human devotion to God, and guides humankind on how to establish harmonious relationships among themselves. In everyday life, tawhîd is the principal point of reference which leads guides humans to act correctly, in both their relations with God

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<sup>1</sup> This article is taken from her presentations on the Dawrah 'Islam and Gender', Cirebon-Indonesia, May 23-27, 2004.

and with other humans and the universe. The sincere practice of genuine *tawhîd* will lead humans to a good life in this world and happiness in the hereafter.

Our initial understanding of *tawhîd* lies in the acknowledgement of the oneness of Allah, who created the world, in knowing His names (*asmâ*), His attributes, and the rational proofs of His existence. However, understanding *tawhîd* involves more than this: if an understanding of *tawhîd* only involved acknowledging God's oneness and power, then even God's lower order creations like Satan could achieve understanding, since Satan acknowledged Allah to be his God. This acknowledgement, however, was not accompanied by obedience to God's commandments; Satan did not comply with God's command to bow before Adam. On the contrary, upon acknowledging Allah's omnipotence, Satan requested in return that he be allowed to try to tempt Adam's descendants into a life of misery (QS. Sâd, 38: 82; Al-Hijr 15: 36-40).

*"The devil said: 'Then, by Your power, I will put them all in the wrong.'" (QS. Sâd, 38: 82).*

*"The devil said: 'O my Lord! (if that's the case, then) give me then respite till the day the dead are raised' (36). Allah said: 'Respite is granted you (37) till the day of the time appointed' (38)". The devil said: 'O my Lord! Because You have put me in the wrong, I will make wrong fair-seeming to them on the earth, and I will put them all in the wrong (39) except Your servants among them, sincere and purified by your grace' (40)...". (QS. Al-Hijr, 15: 36-40).*

Moreover, Arab society acknowledged Allah as the creator, ruler, preserver, and master of nature even before the Prophet Muhammad PBUH. That is clear from the following verse:

*"...Say: 'o whom belong the earth and all things therein? (84)'. They will say: 'To Allah'! Say: 'Yet will you not receive admonition? (85)'. Say: 'Who is the Lord of the seven heavens, and the Lord of the Throne of Glory Supreme? (86)'. They will say: 'They belong to Allah'. Say: 'Will you not then be filled with awe? (87)'. Say: 'Who is it in whose Hands is the governance of all things—who protects all, but is not protected of any? Say if you know(88)'. They will say: 'It belongs to Allah'. Say: 'Then how are you deluded? (89)...". (QS. Al-Mu'minûn, 23: 84-89).*

*"If you ask them, who it is that created the heavens and the earth, they will certainly say, 'Allah'. Say: 'Praise be to Allah!' But most of them understand not". (QS. Luqmân, 31: 25).*

These convictions did not, however, have the effect of creating true Muslims and genuine believers who submit themselves and are faithful to Allah. The mere acknowledgment of God does not make one into a true "*muwahhid*"—one who implements the principle of *tawhîd*--either in one's vertical relation with The Creator or in horizontal relationships with other humans.

We should ask ourselves, therefore, what is the real meaning of *tawhîd*? When it is recalled that the essence of Islam is its system of human values, it becomes clear that *tawhîd* cannot be separated from our horizontal relationships in every-day life, and

particularly the relationship between men and women. The next question, then, is what does it mean in the context of those relationships to acknowledge *tawhîd*?

This latter question leads us to a deeper understanding of the meaning of *tawhîd*, particularly its relation to and meaning for every-day life. This is important considering that the practical significance of *tawhîd* is often undervalued in such a way that it comes to be seen as an old-fashioned doctrine lacking any connection to the problems of contemporary life. *Tawhîd* is often superficially understood as a means for understanding the attributes of Allah, the pillars of faith, and so on. It no longer appears as a force that enlightens and liberates us from injustice, oppression, and other forms of abuse, as was originally taught and practiced by the Prophet Muhammad PBUH.

From an etymological point of view *tawhîd* means 'to truly know that something is one'. We can conclude, therefore, that *tawhîd* means to submit oneself completely to Allah and to no other, to obey all His decrees and prohibitions wholeheartedly, full of love and hope, and fearing only Him.

Many verses in the Qur'ân mention *tawhîd*, but the essence of the concept of *tawhîd* can be found in *sûrah* (passage in the Qur'ân) 'Al-Ikhlâs'. This *sûrah* contains several important teachings, such as that Allah is one, that Allah is our support, Allah has neither parents nor offspring, and that Allah is utterly without equal.

The Prophet Muhammad PBUH implemented these precepts on both a social and an individual level. As a result of his teachings about *tawhîd* the Prophet brought about far-reaching changes in every aspect of human existence, from the level of ideology to mundane matters of daily experience. Based on his conviction of the oneness of Allah, the Prophet strictly prohibited idolatry and any semblance of sanctification of tribes, leaders, or human authorities. This prohibition against the worship of anything other than Allah also extended to worldly desires and individual ego.

The conviction that humankind should rely on Allah alone gave the Prophet extraordinary moral authority that enabled Him to lead a social revolution. The Prophet's position of leadership was vehemently opposed by the Quraishy leaders and other Arab tribes whose power was threatened by the changes. The Prophet, however, was undaunted by the power of His enemies because he had a much more powerful support and protector--Allah the Almighty. He feared no power but the power Allah, and rested all his hope on God alone. The conviction that Allah was neither born of another or the bearer of offspring eradicated any basis for considering any human to be superior to any other. No man could claim to be the son of Allah, as the Jews believed of the Prophet Uzair and the Christians of Jesus. All humans, including The Prophet Muhammad PBUH, are equally servants of Allah. The conviction that Allah is beyond comparison and without equal means that Allah is worthy of being worshipped as God.

The conviction that no human equals Allah and that He has no offspring or

incarnation has given rise to the principle of the equality of humankind, as all humans are Allah's creatures. No human is superior to any other; all are fundamentally equal. No human may be deified in the sense of being made the source of guidance and support, to be feared, prayed to, and regarded as unquestionably correct. A king cannot be a god to his people, a husband cannot be a god to his wife, a rich person cannot be a god to a poor one. Because they are not gods, kings and leaders cannot be worshipped by their people like a god; an employee should not worship his or her employer; a wife should not worship her husband. Thus, fear of and unconditional obedience towards a king, a leader, an employer, or a husband that exceeds that which is accorded to Allah is a denial of the principle of *tawhîd*.

On a social level the power of the principle of *tawhîd* gave the Prophet the courage to defend the weak, the oppressed and those who were rendered structurally and systematically powerless, such as women, slaves, and children, as well as those who were abused by their leaders and others who hold positions of power and hide their cruelty behind the name of God.

It is apparent, therefore, that *tawhîd* is not simply a static religious doctrine. It is an active force that enables mankind to recognize God as God and humans as humans. A genuine understanding of the meaning of *tawhîd* brings both salvation and prosperity to individuals and also forms the basis for a society that is moral, civil, humanitarian, and free of discrimination, injustice, cruelty, fear, and oppression towards individuals or groups. This is how the principle was used, taught, and introduced by the Prophet Muhammad PBUH.

### ***Tawhîd liberates humankind***

The Qur'ân uses the word *taghût* to describe anything that might distract from *tawhîd* and devotion towards Allah. Only those who are able to avoid *taghût* can be regarded as people who are truly devoted to Allah and have a firm and reliable guide and support.

*“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-hold, that never breaks. And Allah hears and knows all things”*. (QS. Al-Baqarah, 2: 256).

*Taghût* refers to anything that is exalted, worshipped, prayed to, obeyed, or followed besides Allah, be it in the form of stones, humans, or the devil. Such was asserted by the commentators on the Qur'ân (*mufasir*), like Ibn Jarir Al-Thabari and Ibn Al-Kathîr. The practice of *taghût* both turns people into tyrants and unshackles them in tyranny. For that reason the faithful must return to Allah and shun *taghût* in order to escape tyranny, cruelty and darkness. Allah has decreed:

*“Allah is the Protector of those who have faith: from the depths of darkness He will lead*

them forth in into light. Of those who reject faith the patrons are the evil ones: from light they will lead them forth into the depths of darkness. They will be companions of the fire to dwell therein forever". (QS. Al-Baqarah, 2: 257).

Through *tawhîd* Allah brought liberation from the shackles of *taghût* and the tyranny that imprisoned them, whether imposed by others who were stronger than they, or created unwittingly by themselves. From the time of the prophet Adam to the Prophet Mohammad the religion of *tawhîd* existed in the midst of despotism. The arrival of Islam also occurred at a time when the majority suffered under the tyranny of the few. These powerful groups used their influence, might, riches and power as instruments to further oppress and weaken the already weak and powerless (*mustad'afin*). Slaves, the poor, common people, women, and children were the groups most easily oppressed by other, stronger groups.

In the period before the arrival of Islam society also suffered under a different form of oppression resulting from adherence to a set of false convictions, norms, values, and traditions. This was a tyranny that people created and imposed upon themselves. As a result of idol worship and conceptions of tribal honour people became the slaves of their own false convictions. Blood flowed with every trivial tribal insult. The birth of a daughter brought feelings of shame, and parents often buried innocent baby-girls alive. Women were not accorded the same rights as men, but were regarded as property and treated in the same way as other property that could be inherited. This was a self-imposed tyranny of false traditions, norms and values. These misguided convictions not only subjected people to cruelty and tyranny, but also created many victims among the weak and the powerless.

In such a highly non-egalitarian, unfair, and repressive situation the idea of *tawhîd* provided a ray of hope and emancipation. With the arrival of Islam people were liberated from the shackles of polytheism, tribal fanaticism, and worldly desires that had enslaved them through the pursuit of false ideals. The advent of Islam also meant liberation from oppression of the weaker groups, including slaves, ordinary people, religious minorities, women, and children. The liberation of these disadvantaged groups, usually known as *mustad'afin*, proves that Islam, as a *tawhîd*-based religion, was not neutral with respect to social inequality but a force for empowerment of the weak and oppressed.

Most people would prefer that the security of the established order not be disturbed. But by questioning the basis for the established order, Islam is inevitably disturbing to some. Indeed, what is perceived by society's elite as security and order is experienced by the repressed as tyranny. The clearest example of such a situation is a society based on caste-system. For those of high caste the established social order is experienced as a blessing. Yet for people of low caste their position within the social system involves flagrant forms of tyranny and oppression. A similar condition of

domination by some and subordination of others is sometimes found in the relation between men and women.

History records that for many centuries, from the time of ancient Egypt, Greece, the Roman Empire, Hindu society, and ancient China, up until the arrival of Islam, women were not considered to be human beings who deserved to be on an equal level with men. Indeed, the rights of women were determined by men. For centuries this was seen as the proper and settled order of society. For some the established order was considered to be destiny, ordained by God. This view was so strong that remnants of the idea have persisted until the present. This belief greatly benefited men but resulted in the oppression of women. In fact, beliefs and institutions created by humans are often advantageous for some and disastrous for others.

A clear illustration of a situation in which the established belief system resulted in gross cruelty to some members of the society is ancient Egypt. In Egypt another societies obedience to the gods at times required the sacrifice of women as a divine offering. According to some ancient Hindu traditions, it was customary for widowed women to be ritually burnt alive because they were obliged to accompany their deceased husband on the funeral pyre. These examples show that serving gods other than Allah causes people to sacrifice their own human values. People become enslaved to ideas and traditions of their own creation.

The emancipation of humankind from tyranny, cruelty and oppression by Islam has followed several different patterns. With respect to some forms of oppression the liberating effect of Islam was total and immediate. In other cases, however, the process occurred in stages or has taken the form of continuous struggle and progress. In all those cases that concerned the application of the principle of *tawhîd* in connection with human life emancipation was immediate and total. Liberation from traditions and unequal social structures occurred in phases. Meanwhile, liberation from the varied forms of oppression and denial of *tawhîd* that have appeared in the past and will continue to arise in the future is a matter of sustained and continuous struggle.

### **Total liberation**

The liberation of mankind from the tyranny of polytheism is an example of total liberation. There are many texts in the Qur'ân that clearly prohibit polytheism. It is even written that polytheism is so great a sin that it cannot be forgiven:

*"... In all truth, Allah will not forgive the sin of polytheism, and He will forgive all other sins except that one (polytheism), everyone whom He wishes to do so. But whoever identifies Allah with something, this is really considered a great sin..."* . (QS. Al-Nisâ, 4: 48).

*"... In all truth, Allah will not forgive the sin of identifying Him (with something) though He will forgive any other sin but polytheism of anyone whom He wishes to do so. But whoever*

*connects something (else) with Allah is truly misled as far as can possibly be...*" (QS. Al-Nisâ, 4: 116).

With this prohibition Allah truly liberated humankind from serving a multiplicity of gods. As God's creations humans must worship their Creator and no other. Worship of other human beings and inanimate objects is forbidden in the strongest terms, since other humans are also God's creations, and inanimate objects are created by humans. As stated in the Qur'ân:

*"...And I did not create humans and the other living beings (jin) but for them to pray to Me..."* (QS. Al-Dhâriyât, 51: 56).

Islam's strict injunction against all forms of polytheism (*shirk*) has important implications for social relations. The prohibition against *shirk* is much more than simply a ban on explicit deification of people or things. A proper recognition of the absolute power and transcendence of God requires avoidance of all actions or beliefs that implicitly liken or associate persons or things with God or Divine qualities. This means, among other things, that no person or group can assume a position like that of a god. Kings and leaders should not oppress their people, treating them like milk cows. A powerful group may not plunder a weaker one and one tribe should never consider itself superior to another. Men are not allowed to regard themselves as the 'owners' of women. Conversely, the members of those groups that are regarded as being weaker should not assume a posture of passive servitude, since creating relationships of subordination and accepting servility taints the purity of *tawhîd*.

Islam also brought direct and immediate change in cases that concern respect for human life. For example, Islam strongly prohibits the killing of baby girls because, according to Islam, women are equal to men before Allah. No one has the right to take the life of another, and parents may not take the life of their own offspring because of shame, poverty, or any other reason.

*"...And when someone from them gets word about (the birth of) a girl, their face darkens (becomes red), and they are very angry (58). They will hide from others; this is caused by the bad news they just heard. Will they take good care of her by enduring the insults, or will they bury her (alive)? Be aware how bad it is what they have decided there..."* (QS. Al-Nahl, 16: 58-59).

*"... Say it: 'Let me read to you what is regarded forbidden to you by your God, which is: don't identify Him with anything, do good towards both your father and mother, and don't kill your children out of fear of poverty. We will provide good fortune to you and them; and stay clear of any contemptible deeds, both those that appear among them and those that are concealed, and don't you be the one to take a life (not even one) which is declared illicit by Allah unless there is something (a reason) which is true.' That was what was ordered to you by your God, so that you will understand (it)..."* (QS. Al-An'âm, 6: 151).

*"... And don't you kill your children because you fear poverty, We will provide a lively*

hood to them and also to you...". (QS. Al-Isrâ', 17: 31).

In these verses Allah strongly condemns the custom of killing babies, particularly baby girls. Allah also prohibits killing one's children because of poverty, both in circumstances where poverty is already a reality creating hardship for the child's parents (according to the interpretation of QS Al-An'âm, 6:151), and also when parents are afraid that they will become impoverished in the future (as in QS Al-Isrâ', 17: 31); Allah promises, however, that He will provide a livelihood.

This clear and strongly worded prohibition has brought Muslims to an awareness of the error of some pre-Islamic practices. As explained in the well known expression of *Sayyidina* 'Umar b. Khattâb: "... None of us had ever considered women in that light, as something of value. After the arrival of Islam, and God spoke of them, we were suddenly aware that women too have rights over us...".

From what has been said here we see that a true appreciation of *tawhîd* is the foundation of sound human principles, norms and values. *Tawhîd* prevents us from falling into servitude to anyone other than Allah. It also prevents the abuse of power and despotism of one group over another. The transformative power of *tawhîd* comes from the fact that *tawhîd* properly situates the Creator as Creator and God's creations as creations.

### Phased liberation

The liberation of humankind from unjust social structures occurred in phases. This is one of Islam's greatest blessings to the weak and oppressed, including slaves, women, children, and particularly orphans. Take for instance the liberation of slaves. Slavery is in direct contradiction to the principle of human equality, and Islam has used a number of different means to abolish it. Because slavery was regarded as legal and socially legitimate in various parts of the world in the Prophet's time it was not possible to eradicate the practice immediately. The wiser course was to abolish slavery in phases.

#### i) Slavery

Islam adopted several strategies to abolish slavery. First, the Qur'ân specifies with precision when it is obligatory to grant a slave his or her freedom. For instance, granting freedom to a slave was offered as a means of atoning (*kifârât*) for committing a wrongful but unintentional killing of another human being (see: QS. Al-Nisâ', 4: 92). In addition, a husband who committed a grave insult against his wife (QS. Al-Mujâdilâh, 58: 3), and a person who failed to keep a promise (QS. Al-Mâ'idah, 5: 89) could also make amends by freeing a slave.

"... And it is unacceptable that one of the faithful kills another one of the faithful (someone else), unless by mistake (not on purpose), and whoever kills one of the faithful by mistake (we

*should wish that) this person should set one pious slave free and pay a fine to the relatives (of the person who was killed), except when the family accepts to give alms. If the (killed) person used to belong to the group of your enemies, even though he was one of the faithful, the person who killed him should still set a pious slave free. And if the (killed) person was not one of the faithful (kâfir), the person who killed him should pay a fine to the relatives and set a pious slave free. Whoever thinks that this is not satisfying may demand that the person who killed the other person carries out a fast for as long as two months, as a way to repent to Allah. And Allah knows all and is the wisest...". (QS. Al-Nisâ', 4: 92).*

*"... People who gravely insult their wife, but seriously wish to retract what they have said, then (it is obligatory) to set free a slave before the couple, husband and wife have sex together. This is what you are taught, and Allah knows all about what you do...". (QS. Al-Mujâdilah, 58: 3).*

Another mechanism that was used to achieve the abolition of slavery was marriage. The Qur'ân teaches that it is better to marry a Muslim slave than a non-believer:

*"... And don't you get married to non-Islamic women before they have become one of the faithful. In all truth an Islamic woman slave is better than one who has not entered the faith, even though she captures your heart. And don't you marry non-Islamic men (to Islamic women) before they have become one of the faithful. In all truth an Islamic slave is better than a person who is not one of the faithful, even though he has captured your heart. They bring you with them to hell, while Allah leads you to heaven and forgiveness with His permission. And Allah explains His directives (His orders) to mankind so that they are able to learn from it...". (QS. Al-Baqarah, 2: 221).*

Yet another means for the gradual abolition of slavery was to grant the status of free person to a child born from the relationship of a slave mother to her master and then to grant the child's mother the status of *ummu al-walad*, 'mother of a free child'. Through these various mechanisms the number of slaves was gradually reduced resulting finally in the complete abolition of slavery from Muslim society.

ii). Inheritance:

A process of gradual change was also used in addressing the subordinate position of women. For example, in pre-Islamic times women were commonly regarded as objects or property which could be inherited. But within Islam women are seen as subjects who are entitled to receive an inheritance. This transformation of the status of women from a form of property that is possessed by men to a holder of rights over her own property was a truly revolutionary achievement whose significance can hardly be overstated. Because the change in the status of women introduced by Islam was so fundamental it could not be implemented all at once without completely disrupting existing social arrangements. Islam therefore adopted a gradualist approach to the full emancipation of women that took into account the social realities that existed at the time. Under the

prevailing practice at the time of the Prophet men were expected to provide for their families. Because the obligation of providing for the economic needs of the family fell to men, it was agreed that a woman's share of an inheritance need be only one-half the amount inherited by a man.

For these reasons it is grossly mistaken to interpret the Qur'anic inheritance verse that gives two shares to males and one share to females as discriminatory towards women. The essential message of the inheritance rule is a message of justice; it manifestly does not mean that women are worth only half as much as men. Indeed, when the issue is examined at a deeper level it becomes clear that the woman's portion actually exceeds that of the man, since her share is purely hers, while her male relative is obliged to use his share to provide for those who depend on him for support. By taking the existing social circumstances into consideration, Islam was successful in securing inheritance rights for women that are both highly significant and just.

Because the essence of Islamic inheritance is justice, division of the inheritance according to the ratio of two parts to males and one part to females (and this division is not followed in all cases) is clearly not the ultimate goal of the law of inheritance. The 2:1 ratio is only an instrument to guarantee justice for women. It is not surprising, therefore, that there are other mechanisms for passing property to women, such as gifts (*hibah*) and testaments (*wasiyyah*). These are simply different methods for sharing an inheritance before one's death. In this way, women often obtain an equal or sometimes larger share than their male relatives. All Islamic experts (*ulamâ*) agree that these are legal transfers of ownership rights. This indicates a general recognition that the essence of Islamic inheritance is justice. People are offered a number of methods for guaranteeing justice for women. In circumstances in which women play an important role in the economy, as they often do today, the rules regarding division of inheritance should be reconsidered to bring them into conformity with the fundamental aim of Islam, i.e. the welfare of humankind.

### iii) Polygamy:

Another example of a gradual approach to full emancipation is the transition from polygamous to monogamous marriage. In the midst of a tradition where men were permitted an unlimited number of wives, Islam limited the number of wives to four. This represented an extraordinary development. At the same time it was also stated that monogamy, marriage to just one wife, is most just. As stated in the Qur'an:

*"... Furthermore when you fear that you can't be just, then (marry) one person only, or the slaves that you own. Doing it that way is closer to not doing injustice..."*. (QS. Al-Nisâ', 4: 3).

Moreover, in another part of the text it is stated explicitly that men will not be able to be just to multiple wives, no matter how hard they try. Allah has decreed:

*“... And you will not once be able to be just to your wives, although you would most strongly wish to do so. Therefore don't spend too much time with the one you love most, leaving the other(s) unattended. And if you make an effort to improve yourself (from being unfair), then Allah forgives all and loves all...”*. (QS. Al-Nisâ', 4: 129).

These two verses emphatically demonstrate that the principle of justice is fundamental in the Qur'ân and is to be incorporated in all aspects of life, including marriage. Contrary to common assumptions, the two verses do not legitimize polygamy. Polygamy is treated as a temporary measure applicable to the early period of Islam that liberated Muslims from the destructive practice of men marrying an unlimited number of wives. The limitation to four wives was a first step toward the eventual goal of monogamous marriage as the best guarantee of justice.

As these examples illustrate, many verses from the Qur'ân that deal with social life are intended to bring about the gradual emancipation of humanity from the bonds of repressive social institutions. The ultimate goal of the Qur'ân—full emancipation—is not explicitly mentioned in the text, since it represents an initial step in a gradual process. For that reason a purely textual reading of the Qur'ân carries a great risk of misunderstanding. When the verses on slavery, for example, are read as legitimating ownership of slaves, Islam appears to be contrary to human rights. Likewise, if one focuses exclusively on the share specified for women in the inheritance verses the law seems unjust. And if the polygamy verses are understood as an invitation to men to take four wives the result will be social injustice in which women and children are the main victims.

To avoid such misinterpretation these verses must be read contextually. A contextual reading requires taking account of the social and cultural background and context that existed at the time when the verses were revealed. This approach is necessary in order to discern the moral messages contained in the texts. Identifying the underlying values of the text is critical because those universal values can serve as a constant guide in all times and in all places, and enable us to achieve salvation in both this world and the hereafter.

### **Continuous liberation**

After He had created Adam, Allah told all the angels to bow before him. All of them did except Satan, who resisted because he felt himself to be better than Adam. The devil's arrogance angered Allah, and since that time the devil was cursed. In His mercy, however, Allah also permitted the devil to seek to mislead Adam's offspring and plunge them into misery for as long as the world continued to turn. Satan was allowed to tempt all of Adam's descendents except the *mukhlisîn*, that is, those who received divine direction and guidance in following all of Allah's directives QS. Sâd, [38]: 71-83).

Satan has used many means to seek to lead mankind to stray from God's guidance. Satan's methods have included creating *ilâh* or other gods besides Allah. With the progress of time and the spread of civilization these *ilâh* have taken different forms. In ancient Egypt they took the form of deified kings, and the people directed all their efforts at satisfying the gods' needs and wishes. In Arab lands in pre-Islamic times the gods that were worshipped were known as *Utâ*, *'Uzzâ* and *Manât* (paganism). In Indonesia during the Hindu and Buddhist period gods were personified in large trees, magical objects (dynamism), and the spirits of the ancestors (animism). Now, in our modern and supposedly most-developed era, false gods are still present but they no longer take the shape of idols or great trees; now they appear as all-consuming desires and obsessions that demand fulfilment, preferably instantaneously. Contemporary gods take the form of obsession with wealth, achieving high social status or high office, a flashy life style, and so on. Materialism, consumerism, hedonism and the other -isms that have dislodged us from proper righteous pursuits have become the 'gods' of modern men and women.

### ***Tawhîd* guarantees justice**

As a religion of *tawhîd* Islam was revealed to humankind by way of the 'Greatest Essence of Justice'. Justice, therefore, is one of the primary and fundamental teachings of Islam. The principle of justice is mentioned repeatedly in the Qur'ân. First, the Qur'ân speaks of justice in family life. God commands to uphold justice and kindness in the family and to do good in and for one's family (QS. Al-Nahl, 16: 90). The importance of behaving justly within the family is especially emphasized, since the family is an institution where unfairness and injustice are all too often concealed. The principal victims of these unjust practices are women and children. In regards to marriage, for example, the Qur'ân stresses that monogamy is the form of marriage that is most just. (QS. Al-Nisâ', 4: 3). This statement is supported by another verse stating that a man with more than one wife cannot possibly behave justly. (QS. Al-Nisâ', 4: 129). These repeated references demonstrate the central place of justice in both marriage and family life.

Secondly, we are commanded to apply justice in trying legal cases QS. Al-Nisâ', 4: 58. We are enjoined to uphold justice for ourselves, our family, and those who are close to us (QS. Al-Nisâ', 4: 135; QS. Al-Anam, 6: 152).

Third, in applying justice to those who have wronged us or people or groups we dislike our actions must be free of all feelings of revenge. (QS. Al-Mâ'idah, 5: 8).

Finally, the principle of justice underlies the duty to care for orphans and manage their possessions, particularly orphaned girls. The Qur'ân makes clear that there can be no justification for ill-treatment of orphaned girls, such as taking them as wives without according them their rights. On the contrary, the Qur'ân states unequivocally that orphaned girls and others who are rendered powerless in the existing social structures

must always be treated justly (QS. Al-Nisâ', 4: 127).

Allah's decrees to be fair and just are pointed and forceful. Justice must be upheld. In order to dispel any doubt as to the fundamental importance of justice, Allah declared Himself to be the 'Supreme Essence of Justice'; QS. Ali Imran, 3: 18) and stated that on the day of judgment He would judge humanity based on pure and genuine justice (QS. Al-Anbiyâ', 21: 47). So forceful were God's statements regarding justice that he guaranteed the truth and justice of His own teachings. Allah declared:

"... The sentences of your God (the Qur'an) have been perfected and are true and just sentences. There is no-one who can change His sentences around and He is the One who hears all and knows all..." (QS. Al-An'âm, 6: 115).

Thus, justice as a central value within the teachings of Islam must guide the ordering of all aspects of our lives. The principle of justice should be reflected in all social norms and values and in every aspect of our behaviour. Without justice the religion revealed by Allah becomes nothing but empty, superficial slogans--like a body without its soul.

### **Justice for the *mustad'afin* (the oppressed)**

Justice as a religious principle always carries an obligation to defend the just, protect the oppressed, and combat tyranny and abuse of power. Justice defends those who are in the right even though they are a minority. It protects the rights of the oppressed against those in power who abuse and violate them. Justice makes religion a pillar of hope.

The arrival of Islam with its commitment to justice brought a ray of hope to the *mustad'afin* (the oppressed). Slaves, who were regarded as only half human, acquired a much better social position, sometimes even better than non-believers (*mushrik*) who were free persons (QS. Al-Baqarah, 2: 221). The poor and the economically and socially vulnerable were able to share in the wealth of the rich through *zakât* (tithe), *infâq* and *sadaqah* (alms); QS. Al-Tawbah, 9: 60; Al-Baqarah, 2: 177). In the same way, the possessions and the safety and religious freedom of those who had not entered Islam (*kâfir*) was guaranteed (QS. Al-An'âm, 6: 152; Al-Isrâ', 17: 34; Al-Nisâ', 4: 2, 6, 10), (QS. Al-Nisâ', 4: 90), (QS. Al-Baqarah, 2: 256; QS. Al-Kâfirun, 109: 6).

### **Justice for women**

Within the ranks of oppressed groups women benefited most as a result of the advent of Islam. Islam recognizes the common humanity of men and women. The custom of killing baby girls, common in the pre- Islamic era, was totally abolished. Indeed, the Qur'an declares the birth of a baby girl to be a joyous message from Allah, and because of that it would be improper if her birth were met with feelings of shame, as was the

case in the past.

i) *'Aqîqah*:

Besides the right not be killed Islam also extended to baby girls the practice of *'aqîqah*. *'aqîqah* is a ritual feast (meal) that involves offering a goat as a sacrifice. In the era before Islam the ritual was only held for baby boys. With the arrival of Islam the birth of a girl was also celebrated with feast, though only one goat was offered for a girl whereas two goats were offered if the baby was male.<sup>2</sup> This does not mean, however, that the value of a baby girl equals only half that of a baby boy. Viewed in the social context in which the change occurred, the command to hold *'aqîqah* for girls constitutes an enormous achievement; whereas baby girls had previously been killed, their arrival was now celebrated. In order that the change not be perceived as overly revolutionary, it was ordained that the *'aqîqah* for girls would be more modest.

In this connection it should also be noted that when The Prophet Muhammad PBUH held an *'aqîqah* for Hassan and Hussein, his two grandsons, he sacrificed just one goat for each child rather than two. The Prophet's action is recorded in several *hadîth* that are recognized as valid.<sup>3</sup> Thus, there is a *hadîth qawliyy* (text concerning what the Prophet said) specifying the sacrifice of two goats for a boy and one for a girl, but there is also a *hadîth fi'liyy* (text regarding the Prophet's actions) indicating that one goat is a sufficient sacrifice for a boy. It would be a mistake, therefore, to conclude that the tradition regarding *'aqîqah* indicates that the value of a girl is half that of a boy.

ii) Marriage:

Justice with regard to women is also reflected in Islam's treatment of marriage. Islam strictly forbids treating young women approaching adulthood as objects to be manipulated by their parents or male relatives. Women must be consulted on whether they wish to marry. This applies to all women, both unmarried girls and experienced widows.

The *hadîth* literature contains accounts of several incidents that demonstrate the Prophet's appreciation for a woman's right to choose her own spouse. As a father the Prophet always asked the opinion of his daughters when someone made a proposal of marriage. In *Musnad Ahmad Ibn Hanbal* it is written that:

*"... The Prophet said to his daughters: 'In all truth, so-and-so often mentions your name'. The Prophet would then consider the girl's reaction. If she did not respond, that was a sign that she agreed and the marriage could soon take place. But if she closed the curtains to her room, it meant that she did not care for the suitor, and the Prophet would not force her will..."*

In addition to the Prophet's daughters, the daughters of the Prophet's companions

<sup>2</sup> According to the *Hadîth* of Tirmidzi and 'A'isyah.

<sup>3</sup> Abu Daud from Ibn 'Abbas; legalized by Ibn Khuzaimah, in *riwayat* Al-Baihaqi, Ibn Hibban, and Al-Hakim from Aisyah.

felt free to choose their own partners. The names of *Khansâ' bt. Khidâm* and *Barîrah* are both mentioned as having expressed their objection to being married to a man they didn't like. For the Prophet it was enough that they refused, and he called the weddings off. In the eyes of the Prophet, therefore, women have the same right to choose a marriage partner as men.

Another right that Islam grants to women is the right to set the bride price. This can be based entirely on her wishes; there is no maximum limit. Islam considers the bride price to be a woman's personal possession, both during the marriage and in divorce or widowhood. The Qur'ân strictly prohibits men from meddling or interfering with this right:

*"... And when you wish to get another wife, while you have given them already many things, then don't take anything back, no matter how small. Or will you take it back by false accusations and with (taking upon you) an obvious sin?..."* (QS. Al-Nisâ', 4: 20).

The rights of women over bride price at one point became the subject of debate. This occurred when the Caliph 'Umar b. Al Khatab stated in a speech that men should give no more than 500 *dirham* as bride price since that was the custom among the Prophet's closest followers. Upon hearing this statement, a woman in the audience stood up and protested, mentioning the verse quoted above, and reminding Caliph 'Umar not to limit a right that had not been limited by Allah. Caliph 'Umar promptly realized his mistake and retracted his words. The right of a woman to determine the bride price has continued to be unlimited ever since. From the moment when she marries, a woman's rights are also guaranteed. Food, clothing, and a home are seen as primary rights, which are guaranteed to all women in marriage.

In addition, women are also guaranteed the right to be treated well (*ma'rûf*; QS. Al-Nisâ', 4: 19). This includes the right not to be beaten like a donkey, not to be insulted or mistreated, and not to be summarily abandoned.<sup>4</sup> Women are also guaranteed the right against being left without any support (QS. Al-Nisâ', 4: 129).

Islam also brought justice to women whose husbands had died. In pre-Islamic times widows were treated as objects of inheritance. The relatives of a woman's deceased husband obtained all rights over her, and she could be married to one of his male relatives. A widow might also be forced to serve as a form of 'compensation' for her deceased husband's family and be married by them to someone else. This practice was known as '*adal* (to neglect, to hurt, and to abandon).

Islam put an end to practices such as 'inheriting' widows and neglecting their rights and treating them badly ('*adal*). At the same time Islam guaranteed that widows would receive proper treatment. Allah decreed:

*"... Hey you faithful ones, it is not proper for you to inherit a woman by force and please*

<sup>4</sup> In the *Hadith riwayat* Bukhari, Muslim and the other *imams*.

*don't make it difficult for her because you want to retrieve part of something you have previously given to her, except when she has done some terrible and obvious deed. And talk with her properly. Next, when you don't like her, (you should be patient, because) maybe there is one thing you don't like about her, but Allah has more than one good thing bestowed upon her...". (QS. Al-Nisâ', 4: 19).*

Islam also guarantees justice for women who divorce. Unlike the proverb 'after the fruit we throw away the skin', women who are divorced have the right to financial support and a place to live, and are not allowed to be mistreated, either physically or mentally (QS. Al-Talâq, 65: 6).

### iii). Reproductive health:

Islam places great value on woman's reproductive health. Allah has a high regard for the difficulties faced by women during pregnancy and during the period after giving birth while she is nursing her baby. That is why Allah made it obligatory for every person to honour one's parents (QS. Luqmân, 31: 14), and in particular one's mother (QS. Al-Ahqâf, 46: 15):

*"... We tell all humans to do good to both their parents. Your mother bore you with lots of effort and difficulty, and gave birth to you, also with lots of difficulty. From one's pregnancy until the end of nursing takes thirty months, so after one has grown up and reached the age of forty, one should say the following prayer..." . (QS. Al-Ahqâf, 46: 15).*

The great esteem for mothers in the eyes of God is reflected in many *hadith* where it is stated that the honour a child owes its mother is three times more than that which is owed to its father. It is also emphasized that heaven is under the sole of a mother's foot.

Islam insists that the health, nutrition and other needs of nursing mothers be protected. Fathers are obliged to fulfil all the needs of nursing mothers, and should a mother not wish to nurse her baby or if something prevents her from nursing it is the father's duty to find a wet nurse (QS. Al-Baqarah, 2: 233); Al-Talâq, 65: 6).

The high value attached to the human reproductive system in Islam is also manifested in concern and respect for women during their monthly period and during the period after giving birth. In contrast to some cultural traditions that regard menstruation as a form of defilement, Islam regards menstruation as a natural process, and a regular menstruation cycle is regarded as a positive thing, as a sign that a woman is healthy and normal. For that reason a woman is free to engage herself with others during her period and have a normal relation with her husband, although they should refrain from having sexual intercourse. While the menstrual blood is considered impure, the woman herself she is not regarded as an impure person. As a consequence, sexual relations are not allowed, but all other activities are permissible (QS. Al-Baqarah, 2: 122).

Based on several *hadīth* related by 'Aishah, the Prophet's wife, we know that the Prophet himself engaged in normal activities with his wife during her period. They shared the same bed and drank from the same glass. There was no discrimination against women during their periods. As for the prohibition against sexual relations during a woman's menstruation, this is mainly based on the goal of protecting the reproductive organs; it is clinically proven that intimate relations during a woman's menstruation may damage a woman as well as a man's reproductive organs.

The prohibition against women performing certain religious duties during their periods is based on humanitarian considerations and is not discriminatory. During her menstrual period and the period after the birth of a child a woman is not permitted to perform *salât* (prayers), *sawm* (fasting), *tawâf* (ceremonial circumambulation of the *Ka'abah*) and *i'tikâf* (do nothing except praying in the mosque). Abstention from these activities is rewarded by Allah, since abiding by God's proscriptions has the same value as complying with His positive commands. Thus, a woman who attends to her religious duties under normal circumstances is rewarded for her conduct, so too women are rewarded for knowingly and deliberately refraining from those same actions during their periods. It is a reflection of God's justice that He takes a woman's physical and mental condition into consideration when she goes through the various stages in the reproductive process.

Islam also provides broad and fair access for women to be active outside the household in the public sphere. Education, employment, trade, social activities and even politics are all open to women. As with men, these activities should be conducted respectfully and with dignity.

It is recorded that during the time of the Prophet 1, 232 women received and transmitted *hadīth* (Prophet's texts). The Prophet's wife, 'Aishah, was one of seven individuals who had the responsibility of maintaining collections of *hadīth*. She also related 2,210 *hadīth*. *Khadijah bt. Khuwailid*, the Prophet's first wife, was known to be a successful business woman. *Al-Shifâ'* was appointed by Caliph 'Umar as supervisor of the market in the capital city of Medina, a major market at that time. *Zainab*, one of the Prophet's other wives, was a tanner whose profits were distributed among the poor as alms. And *Zainab*, the wife of *Ibn Masûd*, and *Asmâ' bt. Abu Bakar*, worked outside the house to earn an income for their families. Many women also served on the battlefield, either behind the lines assisting the wounded and taking care of logistics, or at the front, carrying weapons and facing the enemy. *Nusaibah bt. Ka'ab*, a woman, carried the Prophet's weapons at the Battle of Uhud, while several others, like *Al-Rabî' bt. Al-Mu'awwidh*, *Ummu Sinân*, *Ummu Sulaym*, *Ummu 'Atiyyah* and a group of other women fought at his side. This we know from various reliable *hadīth* and well known works on history.

These illustrations show that during the time of the Prophet justice for all and for

women in particular was not mere rhetoric but a social reality that was applied in the whole of society. The Prophet was committed to justice for women from the beginning and strove to create opportunity and access for women in all aspects of life.

It is undisputed that social practice during the Prophet's lifetime was an implementation of the principle of *tawhîd*. It should be clear, therefore, that justice for women as articulated in the Qur'ân and practiced by the Prophet is a fundamental element of *tawhîd* itself. Through *tawhîd* women, who were among the oppressed, were brought into the human community and assigned their just rights. In the context of the relation between men and women, justice eliminated discrimination and favouritism for one sex over another. It also gave equal weight to the rights and responsibilities of men and women. It prevented women from being assigned a lower social position under the power and domination of men. At the same time justice deprived men of the opportunity to exercise complete power over women. Justice cannot of course abolish gender differences, but it opposes the use of gender as a basis for differentiation between the sexes. This is what we learn from the Qur'ân and the example of the Prophet with respect to justice in the relations between men and women.

### ***Tawhîd as the basis of equality***

In addition to liberating humankind from the bonds of *taghût*, tyranny and oppression, *tawhîd* also wipes out all forms of discrimination and subordination. The conviction that only Allah is God and that nothing or no one equals Allah necessarily means that all humans are equal before Allah, both as His servants and as His *khalîfah* (representatives on earth). *Tawhîd* imposes the same obligation on men and women, to worship Allah and no other. God has decreed:

*"... And I did not create man and jin except to pray to Me..."*. (QS. Al-Dhâriyât, 51: 56).

As servants of Allah there is no difference between men and women. Both have the potential to become ideal servants, what the Qur'ân refers to as *muttaqun* – the devout or pious (as in QS. Al-Hujurât, 49: 13):

*"... Hey people, in all truth We created you from a man and a woman and made you into cultures and tribes so that you would get to know each other. In all truth, the most honoured ones among you at Allah's side are the most devout ones among you, and in all truth Allah understands all and knows all..."*.

The Qur'ân records that when Allah gave His commandments to His servant Adam He also gave the same commandments to Eve. When Allah issued a prohibition He directed it at both of them. On this point the Qur'ân is clear:

*"... We decree: O Adam, be quiet from your wife in this paradise, and please eat much food, so good too, which ever the two of you like. But, please don't either of you go near this tree that*

*causes you two to become tyrannical and despotic people...". (QS. Al-Baqarah, 2: 35).*

The obligations of *tawhîd* are the same for men and women. So, too, are the duties. The commandments to pray (*shalât*), give alms (*zakât*), fasting (*sawm*), and pilgrimage (*hajj*), which together serve as the pillars of Islam, are obligatory for men and women equally. The same holds for prohibitions, such as polytheism, murder, adultery, stealing, consuming alcohol and other addictive substances, as well as other sinful and immoral actions. These are prohibited of all humans, regardless of gender or other differences. Because men and women have the same obligations Allah has given men and women the same opportunity to obtain blessings, forgiveness, and paradise. Many passages in the Qur'ân affirm this essential equality:

*"... Men and women who surrender themselves to Allah, devout men and women, sincere men and women, honest men and women, patient men and women, men and women who fear Allah, men and women who give alms, who fast, who cover their body (awrat), who chant (dhikr) in praise of Allah, for them Allah has forgiveness and great rewards for their moral conduct...". (QS. Al-Ahzâb, 33: 35).*

*"... Thus God granted their request (by decreeing), 'In all truth I don't neglect the charity of you charitable people, both men and women, (because) you are the offspring of all others. Thus, all of you who are fleeing (hijrah), who are chased away from home and hearth, who are hurt on My path, who fight and who are killed, be assured that I will wipe off their mistakes and be assured that I will put them in paradise which rivers' stream under it, as a reward at the side of Allah. And Allah at His sides a great reward...". (QS. Ali 'Imrân, 3: 195).*

*"... Whoever performs pious charity, as devout men or women, therefore in all truth We will provide him or her a good life. And in all truth We will grant them a reward, much greater than what it was they initially performed...". (QS. Al-Nahl, 16: 97).*

*"... Whoever does an evil deed, he or she will not be retaliated graver than the violence that was first inflicted. And whoever performs pious charity, or better still, by a devout man or a woman, therefore he or she will enter paradise. They will receive limitless prosperity there...". (QS. Ghâfir, 40: 40).*

As *khalîfah*, or representatives of God on earth, humankind has the obligation to bring prosperity, welfare, peace, and glory to all creation (*rahmatan lil-'alamîn*). A critical step toward the achievement of that objective is becoming alert to the need to uphold the truth, promote good works, and combat iniquity (*amar ma'rûf nahi munkar*). It would be futile, of course, for one of the sexes to pursue these aims while the other sex did the precise opposite. Since all humanity has a common obligation to serve as God's representatives, men and women are commanded to cooperate, work together and support one another in establishing righteousness and combating evil in order to create a world that is true, good, and beautiful in the grace of Allah. Allah has said:

*"... Devout people, men and women, some of whom will help the others. They will tell*

*you to do good and guard against what is ignored, implement Islamic prayers (salât), fulfil their obligation to give alms (zakât) and they will obey Allah and His Prophet. They are the ones who will receive Allah's mercy...*" (QS. Al-Tawbah, 9: 71).

Thus, women and men have the same role and responsibilities. This stands to reason, since the task of stewardship was assigned not just to men but also to women. The Qur'ân states: "... And it was He who made you in to the worldly representatives (*khalîfah*, *khala'if*) and He raised some of you a few levels higher than the others in order to test you about what He has given to you..." (QS. Al-An'âm, 6: 165).

This verse uses the word *khalâ'if*, the plural form of the word *khalîfah*, which means one who holds authority by another. The Arabic term does not indicate either male or female gender. Men and women therefore have the same obligations and both will have to account for their stewardship before Allah.

There is one word that designates the means by which humankind can fulfil its assigned roles and responsibilities as either servant or leader. The key word is devotion. Descent, gender, and elite status are all irrelevant. As stated in the Qur'ân: "... *Hey you people, in all truth We created you from a man and a woman and made you in to societies and tribes so that you would get to know each other. In all truth the most glorious ones among you at Allah's side are those who are most devout...*" (QS. Al-Hujarât, 49: 13).

Considering that greatness is measured by the quality of individual devotion it comes as no surprise that over time many women have been highly regarded in the eyes of God and the world. To mention just a few, in the period before the Prophet the Qur'ân mentions *Asiyah bt. Muzâhim*, the wife of *Fir'awn* the tyrant, as the symbol of a woman who was firm in her convictions and did not let herself be influenced by her husband's abuses (QS. Al-Tahrîm, 66: 11). The Qur'ân also presents the story of *Maryam bt. Imrân* symbolizing the strength of a woman who guards her purity (QS. Al-Tahrîm, [66: 12). *Maryam* is said to have received a revelation from one of the angels which foretold her position as a chosen woman (QS. Ali 'Imrân, [3]: 42-43).

In the time of the Prophet many other women achieved a high level of devotion. History records that the first person to die a martyr's death was a woman named *Sumayyah*. Likewise, the first person to accept the Prophet's message was a woman, *Khadijah bt. Khuwailid*, his wife. The Prophet showed no hesitation in making *'Aishah* a spokesperson for other women because he recognized her intelligence and the strength of her religious convictions. When the Prophet and one of the companions, Abu Bakar, were forced to hide in the Tsur (cave) to escape from the violent Quraishi who wanted to kill them, it was *Asma' bt. Abu Bakar* who had the courage to bring food and leave it at the mouth of the cave. When the Prophet became confused by his followers' reluctance to comply with his instruction to cut their hair (*tahallul*; as part of their *'umrah hudaibiyah*), it was *Ummu Salamah* who came forward with the clever solution: she suggested that the Prophet have his own hair cut in their presence without uttering a word. The Prophet

did as she suggested, and the others followed his example.

### ***Tawhîd* as a base for community**

On the basis of justice and equality all people are united in a common brotherhood in *tawhîd*. History records that the arrival of Islam put an end to the fanatic tribalism that plagued Arab society, sowing division and causing much bloodshed. The animosity between the *Aus* and the *Khazraj*, for instance, which had existed for generations disappeared after they embraced *tawhîd*. Gone were feelings of rivalry and superiority. *Tawhîd* also transformed notions of greatness. Whereas greatness had previously been measured by victory in tribal warfare, with the arrival of Islam greatness in the eyes of God and the Prophet came to be measured by the quality of individual devotion. Competition for tribal pre-eminence was replaced by the effort to earn the title of most devoted. In this way the Muslims were bound together in brotherhood by a tie that is far stronger than tribal connections—the rope of God.

In addition to uniting tribes *tawhîd* also united individuals. It is written that several people from the *Muhâjirin* group were brought together with others from *Ansâr*, including Abdurrahman b. 'Auf with Sa'ad b. Al-Rabi. Their brotherhood developed on the basis of mutual assistance, honor, and respect.

Equally important is the effect of *tawhîd* in uniting men and women in bonds as close as those between siblings. Men and women must refrain from injuring or insulting each other, and must cooperate, help one another, and bear each other's burdens in pursuit of their shared ideals. The Prophet said "... women are the sisters of men..."<sup>5</sup>

This statement has a profound significance. The words "brother" and "sister" have connotations of equality, togetherness, love, respect for the rights of others, defence of those who suffer injustice, and shared burden and destiny. The concept of brotherhood also erases the word "I," in order that everyone acts together in the spirit of "we" for the common good.

The profound import of the Prophet's words must provide the inspiration for all social action that involves men and women. As brothers and sisters men and women must work together in every endeavour in order that the aspirations of society can be achieved and enjoyed by all. Men must not neglect or belittle their sisters. Likewise, women must not disregard their brothers or become focused on themselves and fail to recognize what their brothers are trying to achieve. United as brothers and sisters, men and women are entreated to join together and collaborate in the creation of a just and prosperous society in the grace of Allah, *baladun tayyibatun wa rabbun ghafûr* (QS. Saba', 34: 15). *Wallâhu a'lam.*[]

<sup>5</sup> *Hadith riwayat* Abu Daud; Al-Timidzi.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ

مَوَدَّةً وَرَحْمَةً إِنَّ ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ﴿٢١﴾

*...And among His signs (of greatness) is that He created for you your partners, from among your own kind, so that you may dwell in tranquillity together with them, and He made that between your (hearts) there are deep feelings of love and mercy: verily in this there are signs (of His greatness) for those who reflect...*

(QS. Al-Rûm, 30: 21)

# Interpreting the Qu'rân 4





**T**he reference material presented in this section explains the concept of 'divine revelation' or the way in which the texts in the Qur'ân were revealed to us, and their connection to one of Islam's ultimate aims - its mission to liberate mankind on earth. The reference material also explains some of the models of interpretation that are applied to the Qur'ân's texts, and how these models of understanding came in to being, grew and developed further. It also addresses the question how the various interpretative models can support developing a methodology for the empowerment of women.





### OBJECTIVES

At the end of this session the participants will be able...

1. To understand the meaning of some of the most important terms in relation to the history of receiving the Qur'ân's texts;
2. To understand the Arab context of the time when the Qur'ân's texts were handed down to us and their connection to Islam's mission of liberating mankind, particularly its efforts to liberate women;
3. To know which Qur'ân texts are pertaining to women;
4. To know which Qur'ân texts were written as a result of requests (by women) at the time;
5. To know that there are several ways and principles according to which one can interpret the Qur'ân, and the relation with the interpretations that appeared;
6. To understand the relation between socio-historic factors of methodology and the interpretation of gender relations;
7. To explain the principle of gender equality in the Qur'ân;
8. To know some of the gender-biased issues, which in the Qur'ân are explicitly presented in a literal way, and were later interpreted in an unjust gender perspective;
9. To know just interpretations (as seen from a gender-friendly perspective) as formulated in classical as well as modern traditions;
10. To know an effective methodology with which to establish a gender-just interpretation.



### POINTS FOR DISCUSSION

- Understanding some of the more or less general Islamic terms, such as *al-Qur'ân*, *al-mushhaf*, *wahy* (revelation), *Jibril*, *tanjîm*, *tafsîr* and *ta'wîl*, *makkiyah-madaniyyah*, *nâsikh-mansukh*, *asbâb al-nuzûl*, and *al-ahruf al-sab'ah*;
- The efforts formulated in the Qur'ân's texts that refer to the position of mankind, particularly the equality and liberation of women;
- Themes and texts that directly refer to (the position of-) women, such as the creation of mankind, the head of a family, hitting (as a punishment), a woman witness, inheritance, divorce and re-marriage, sexuality, women's independence and equality in terms of devotion, individual character, and wealth;

- Texts which were handed down based on the remarks of women, such as *Surat Ali Imran: 195, an-Nisa: 32 and 34, al-Ahzab: 35, an-Nahl: 97*;
- Methods for interpreting the Qur'ân: *bil-ma'tsûr/bir-ra'yi, muhkam/mutasyâbih, qat'iyy/zanny, kulliyât/juz'iyyât*, which emphasize the concepts and role of textuality (literal interpretation), intertextual (comparative-) interpretation, and contextuality, which are all part of a Qur'ân's text;
- The principles and essential meaning of a Qur'ân text, such as *munasâbah al-âyat, marji'iyyat al-hidâyah, at-tanjîm, 'adam at-ta'ârud, al-'ibrah bil-'illah, asbâb al-wurûd, lâ ijtihada fî mawrid an-nash, taghayyur al-ahkâm bi taghayyur al-azminah wa al-amkinah*;
- Socio-historic factors ('contextuality') which influence our understanding of a Qur'ân text, particularly on themes such as concerning *isra'iliyât*, the influence of political constellations on formulating an interpretation, the influence of the various schools of thought (or '-isms' in Islam) and their fanaticism, the influence from social groups or different cultures, the influence of a particular time (era), cultural developments;
- The principle of gender equality as formulated in the Qur'ân;
- Gender-biased interpretations of the Qur'ân's texts;
- A method to avoid gender-biased interpretations: a proposed alternative.



#### METHOD

Group work, group discussions, a speaker's contribution.



#### TOOLS

Sticky cloth, markers, plain paper, coloured cards/pieces of paper, cello tape.



#### TIME

4 Hours.



## STEPS

### *First stage (1 hour):*

1. The facilitator asks the participants to form smaller groups and discuss some of the themes related to women's issues. Each group addresses its own theme, different from the one chosen by another group;
2. Formulate questions to keep the discussions on the various themes going;
  - a) Collect the relevant Qur'ân texts, that are connected to the various themes discussed by the groups;
  - b) Formulate what the crucial problem is that is addressed in the particular Qur'ân text that each group is working with;
  - c) When one reads the actual text, what image, what feeling do we get from it?

Next, present the **Navigator text** in this section.

The groups write down the findings on paper.

3. Each group presents their separate findings to the group and discuss them together (group discussion);
4. Together with- and guided by the facilitator the participants should be able to reach the proper conclusion: that the texts cannot be separated from the readers' subjectivity—our social position, individual inspiration, time and place etc., these are all factors influencing a text's meaning and interpretation.

### *Second stage (1½ hours):*

5. The facilitator introduces the presentation of the guest speaker/ expert, presenting the conclusions as formulated at the end of the previous session (crucial texts from the Qur'ân that refer to gender relations and the position of women);
6. The speaker starts his/her talk exploring and explaining some of the basic terms that are used in Qur'ân studies, including: the definition of the Qur'ân, the number of sections (*juz*), texts (*sûrat*) and paragraphs (*âyat*); the era and the moment in which we first learned about these

texts, how this happened, in which way we had to learn them (-by heart), write them down and ascribe meaning to them; the position and role of the Qur'ân as a source of laws, its characteristics, and so on;



7. Similar to step #7, the speaker also mentions the conditions of Arab society at the time when the Qur'ân was handed down to us, and how it could happen that certain paragraphs appeared later, as a reaction to remarks or requests made by women – illustrating the idea that the texts appeared as a result of- and are based on contemporary situations and conditions: these include parts of *sûrah* Ali Imran (3: 195), al-Nisâ (4: 32, 34), al-Ahzab (33: 35), al-Nahl (16: 97), *sûrah* al-Mujadilah and others;
8. The speaker continues and points out some of the basic elements for interpretive studies and close reading of the Qur'ân, according to classical Islamic traditions;
9. The speaker explains that there are various factors causing differences in interpretation, and illustrates this with several examples – not only **that** there are differences, but also **how varied** these can be, even within classical Islamic traditions. It serves as a reminder that the Qur'ân is a book which texts are liable to contemporary interpretations, depending on the requirements of time, place, and (new generations of-) its interpreters;
10. The speaker introduces a different method of interpreting texts from the Qur'ân, this time from a women's perspective. The background for this exercise is the view that the Qur'ân's ultimate aim, or mission

is thought of as being a text which serves as a guideline (*risâlah al-hudâ*) for mankind. As far as the speaker can address this idea, examples should be provided that deal with the Qur'ân where it explicitly formulates its liberating mission, either from classical Islamic traditions or otherwise later interpretations. Islam's central concept of liberating mankind can be presented as a methodological approach in interpreting of the Qur'ân's texts, which is supportive of women;

11. The speaker presents various women's issues, such as the creation of mankind, the position/role of head of the family, physical violence, a woman's testimony, women and inheritance, divorce and reconciliation, sexuality, independence (on a religious level: devotion, as well as in an economic sense) and so on. The speaker selects one crucial topic and compares a gender-biased and a gender-friendly interpretation, from a classical tradition as well as from modern writings;
12. The speaker emphasizes once more the methodology that can be applied to obtain a gender-friendly (or at least: non-gender biased) interpretation of the Qur'ân's texts.

### *Third stage (1½ hours):*

13. The facilitator invites the participants to ask questions and forward their remarks, opinions, ideas, and comments;
14. The facilitator tries to elicit from the participants the conclusion that in reading the Qur'ân it is not enough to adhere closely to the (literal-) texts, but that each text should be seen in relation to something else – this can be context, or intertextuality: comparing it with other *âyat* (paragraphs) or *hadîth* used elsewhere (in the Qur'ân), or based on insights from other disciplines, such as the texts' socio-historic circumstances, and so forth. This is based on the idea that the Qur'ân's ultimate mission concerns '*al-huda*', to serve as a guideline leading mankind to a firm belief in monotheism, an all-pervading sense of God's mercy, liberation, and social justice. This conceptual background enables us to formulate the importance of gender equality, as a relevant perspective with which to address social phenomena and developments.



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### Notes for the facilitator/speaker (expert)

- ✓ Have the **Navigator-text** ready (which mentions the exact place of the various texts in the Qur'ân pertaining to women). It is an index of some of the most important gender-texts (ayat) in the Qur'ân, particularly the texts that mention gender relations and the role and position of women in different contexts. It is included in this part of the manual.
- ✓ Try to make the participants themselves find the relevant paragraphs (ayat) and their translation, or the translation of their interpretation. Or the ayat (paragraphs) which may serve as a basis for a paradigm supporting a gender-friendly interpretation.

**Navigator-text:  
Index of words referring to women in the Qur'an.**

The **bold** numbers refer to the Qur'ân's *ayat* (paragraphs), the other numbers to the particular verses.

**Divorce:** **2:** 102, 229, 230, 231, 236, 237, 241; **3:**103, 105; **4:** 23, 130; **6:**91, 159; **8:**57; **9:**25; **16:**92; **33:** 28, 37, 49, 51; **65:** 1, 2; **66:** 5.

**Girls:** **56:**36; **66:**5; **78:**33.

**Wife:** **2:**35, 102, 187, 223, 226, 229, 231, 232, 234, 236, 237, 240; **3:**15, 61; **4:** 1, 12, 20, 23, 24, 35, 57, 128, 129; **6:**101; **7:**19, 83, 189; **9:**24; **11:**71, 81; **12:**21, 25, 29, 30, 51; **13:**23, 38; **15:**60; **16:**72; **19:**5, 8; **20:**117; **21:**90; **23:**6; **24:**6, 8; **25:**74; **26:**166, 177; **27:**57; **28:**9; **29:**32, 33; **30:**21; **33:**4, 6, 28, 30, 31, 32, 37, 50, 51, 52, 53, 55, 59; **36:**56; **37:**135; **39:**6; **40:**8; **65:**1.

To have more than one -: **4:**3.

The way to treat a ~: **4:**19.

~ 'is like an (uncultivated-) field to a husband': **2:** 223.

~ 'is like a devout tyrant': **66:**11.

~ of Noah and Lot who committed treason: **66:**10.

Sexual organs of a ~are only a husband's: **24:**31.

Sexual organs of a husband are only a ~'s: **23:**6; **70:**30.

Husband as leader of a ~: **4:** 34.

Support for a divorced ~: **2:**241.

*Nusyuz* for a ~: **4:** 34, 128.

Prohibition to take wealth from a ~: **4:**20.

Last will and testament for a ~: **2:**240.

No period of *iddah* ('seclusion') for a ~ who is divorced and has not had sexual intercourse: **33:**49.

**Marriage:** **2:**230, 232, 235; **4:**3, 6, 20, 21, 22, 24, 25, 127; **15:**71; **20:**40; **24:**32, 33, 60; **33:**37.

~ Proposal: **24:** 32, 33.

~ Laws: **4:** 22, 23.

Acceptable to ~ an educated woman: **5:** 6.

Brideprice: **33:**55.

To marry: **2:**235; **5:**5; **24:**3; **33:**49, 52; **60:**10.

**Woman:** **3:** 195; **4:** 1, 3, 11, 12, 23, 35, 35, 47, 75, 176; **5:**6, 38; **6:**100; **7:** 128; **9:**67, 68, 71, 72; **11:** 72; **13:**8; **14:**6; **16:**57, 58, 92, 97; **17:**40; **19:**28; **24:**2, 3, 32, 58, 60; **28:**11, 12, 25, 26; **33:**35, 36, 49, 50, 51, 52, 55, 73; **35:**135, 150; **40:**40; **41:**47; **42:**49, 50; **43:**19; **48:**6, 25; **49:**13; **71:**2; **75:**39; **86:**7; **92:** 3.

Period of *Iddah* ('seclusion') for a pregnant ~ : **65:**4, 6.

Proper attitude for a ~ : **33:**32.

~ witches: **113:**4.

**Wedding:** Suggestions for a ~: 24: 32.

~ With a non-Islamic woman: 2: 221,

Basic ~ laws: 2: 221; 4:24, 25; 33:49.

~ as a (legal-) bound: 4:21.

**Queen:** ~ of Sheba gives herself over: 27: 44.

**Husband:** ~ has the right to reconcile (*rujuk*) with his divorced wife when she is pregnant: 2:228.

a ~'s wish to provide his divorced wife *mut'ah*: 2:241.

'a wife is like an (uncultivated-) field to a ~: 2: 223.

The law on a ~ accusing his wife of adultery: 24:6-9.

Returning the brideprice to a ~: 60:10, 11.

Request of a divorce to a ~ with payment : 2:229.

~ may not refuse the *azab* (misery) that befalls his wife: 66:10.

**Divorce:** several regulations on ~ and *iddah* ('period of seclusion') 65:1-7.

The status of wealth during the process of getting a ~: 4:20.

~ where getting back together (*rujuk*) is not allowed: 2:230.

**Women:** 2:178; 4:25, 75, 98, 127, 128; 3:14; 6:139; 12:24, 25, 26, 27, 30, 31, 32, 50, 51; 24:26, 33; 27:23; 28:23, 25, 26; 33:32; 52:39; 53:21, 27; 57:13, 18; 65:4.

Proposing to a ~ during her period of *iddah* ('seclusion' [after a divorce]; 'mourning' [after the death of a husband]) 2: 235.

Acceptability of marrying a non-Muslim ~ (*ahlul kitab*): 5:5.

Devout and virtuous men and ~ who do good deeds (works) will go to heaven: 4:124.

Prohibition to leave ~ behind forcibly: 4:19.

Prohibition to marry non-Islamic ~: 2:221.

Period of *iddah* ('seclusion') for ~ who are divorced: 2:228.

Islam protects the rights of men and ~: 4:32.

'Men as the leaders of ~': 4:34.

Obligation to provide *mahar* (brideprice) for ~ who are going to get married: 4:4.

Rule for ~ to obtain an inheritance: 4:7.

Prohibition to have sex with ~ who have their period: 2:222.

Prohibition to take back wealth that is already given to ~: 4:20.

Proper relation between men and ~ who are not related (*muhrim*): 24:30, 31.



~ who are divorced are entitled to receive *mut'ah* (a financial guarantee) from their former husband: 2:241.

~ who are not allowed to get married: 4:22, 23, 24.

~ who file a legal suit: 58:1, 2.

~ who have been divorced three times are not allowed to be reconciled before they have married their next husband: 2: 230.

Expressions illustrating gender equality  
in some of the Qur'ân's texts (âyat al-Qur'ân)

PRINCIPLES OF EQUALITY	ARGUMENTATIONS from the Qur'ân
<p>Similar source of creation of all humans</p> 	<p>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 (١)</p> <p>“...O mankind! Reverence to your Guardian-Lord, Who created you from a single person, created, of a similar nature, a partner, and from them scattered (like seeds) countless men and women- reverence to Allah, through whom you demand your mutual (rights), and (reverence) to the wombs (that bore you): for Allah ever watches over you...” ( QS. al-Nisâ [ 4]: 1).</p>
<p>Mankind, deliberately created with differences, is valued (qualitatively) only on basis of the degree of devotion (taqwâ).</p> 	<p>يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ (١٣)</p> <p>“...O mankind! We created you from a single (pair) of a man and woman, and made you into nations and tribes, so that you may know each other (not that you may despise each other). Verily the most honoured of you in the sight of Allah is (the one who is) the most devout (of you). And Allah has full knowledge and is well acquainted (with all things)...” (QS. Al-Hujurât [49]: 13).</p>
<p>Men and women have equal responsibilities and will be equally rewarded for it.</p> 	<p>مَنْ عَمِلْ صَالِحًا مِنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيَاةً طَيِّبَةً وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ (٩٧)</p> <p>“...Whoever does one’s work with righteousness, man or woman, and has faith, verily, to this person will We give a new life, a life that is good and pure and We will bestow on such (a person) their reward according to the best of their actions...” QS. Al-Nahl [16]: 97.</p>

Men and women equally supporting each other and being rewarded equally.



وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ  
عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيَطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ  
سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ (٧١)

“...The Believers, men and women, are protectors of one another, they enjoy what is just, and forbid what is evil: they observe regular prayers, practise regular charity, and obey Allah and His Messenger. On them will Allah pour His blessings: for Allah is Exalted in power, Wise...”. (QS. Al-Tawbah, 9: 71)

Basic equality of men and women before Allah.



لِذِّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَاتِينَ وَالْقَاتَاتِ  
وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْحَاشِعِينَ وَالْحَاشِعَاتِ  
وَالْمُصَدِّقِينَ وَالْمُصَدِّقَاتِ وَالصَّانِتِينَ وَالصَّانِتَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ  
وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً  
وَأَجْرًا عَظِيمًا (٣٥)


“...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 provide 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 rewards...”. (QS. Al-Ahzâb [33]: 35).

To protect each other.



أَحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ  
لِبَاسٌ لَهُنَّ

“...It is permitted to all of you, on the night of the fast, to be intimate (i.e. have sex) with your wives. They are your garments and you are theirs....”. (QS. Al-Baqarah [ 2]: 187).

<p>A woman's right to retain her possessions (given to her when she expressed her marriage vows).</p> 	<p>وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا (٢١)</p> <p>“...And how could you take (her legitimate part of the bride-price) even when you have already been intimate (i.e. had sex) with each other, and they have received it from all of you after the (nuptial) agreement?...”. (QS. Al-Nisâ, [4]: 21).</p>
<p>The principle of willingness to consent (i.e. to consent to-, to accept, or to trust the decisions of a previously divorced wife [to remarry]).</p> 	<p>وَإِذَا طَلَّقْتُمُ النِّسَاءَ قَبْلَ أَنْ يَجْتَنِبْنَ أَجَلَهُنَّ فَلَا تُعْضِلُوهُنَّ أَنْ يَتَّخِذْنَ أَرْوَاجَهُنَّ إِذَا تَرَاضُوا بَيْنَهُنَّ بِالْمَعْرُوفِ ذَلِكَ يُوعَظُ بِهِ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ أَرْكَىٰ لَكُمْ وَأَطْهَرُ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ (٢٣٢)</p> <p>“...When you divorce a woman, who then fulfil the term of their obligatory period of seclusion (iddah), do not prevent them from marrying the person of their choice, if they mutually agree on equitable terms. This instruction is for all amongst you, who believe in Allah and Judgement Day. That is (the course to obtain) most virtue and purity amongst you. And Allah knows, and you know not...”. (QS. Al-Baqarah [2]: 232).</p>
<p>It is not proper to force women (into marriage), and men and women are expected to treat each other in a proper way.</p> 	<p>يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرْتَبُوا النِّسَاءَ كَرْهًا وَلَا تَعْضِلُوهُنَّ لِذَهُبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبِينَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ</p> <p>“...O you Believers, you are forbidden to inherit a woman against her will. And don't you prohibit them (from re-marrying) so that you can take a part of the bride-price you have given them—except when they have done something obviously terrible. And talk with them and treat them with kindness and equity. If you take a dislike to her it may be that you dislike a thing, and Allah brings about through it a great deal of good...”. (QS. Al-Nisâ [4]: 19).</p>

Mutual consent and deliberation on basic matters within a family.



فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا

"...If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them..." (QS. al-Baqarah [2]: 233).

Establishing (an atmosphere of) peace, love and mutual respect within a family.



وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ  
بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ (٢١)

"...And among His signs (of greatness) is that He created for you your mates, from among your own kind, so that you may dwell in tranquillity together with them, and He made that between your (hearts) there are deep feelings of love and mercy: verily in this there are signs (of His greatness) for those who reflect..." (QS. Ar-Rum, [30]:21).



## **Re-reading the Qur'ân: the Relation between Text and Context**

*Husein Muhammad*

**T**he exegetes of the Qur'ân are in general agreement in affirming that the Qur'ân is quite literally the words of Allah (*Kalâmmullâh*), sent down through the angel Gabriel to the Prophet Muhammad (upon whom be peace), and handed down to us along an unbroken (*mutawâtir*) chain of reliable transmitters and written down in a book (*mus-haf*). Reading it is considered an act of devotion, bringing reward. The Qur'ân is also a miracle (*mu'jizat*): it is extraordinary, something that surpasses man's potential, and its language cannot be equalled by anything else (*i'jâz*).

Muslims believe that the Qur'ân is a revealed by Allâh; it is the holy book, and the ultimate and most authoritative source of knowledge, and guidance for our daily activities. In it we can find all the aspects that are needed in the life of a Muslim and a Muslimah, leading to a world full of prosperity, and happiness in the here-after. The Qur'ân speaks of itself as the book that explains all (*tibyân li kulli shay'*). However we should try to understand this statement from the Qur'ân critically. 'To explain all' does not mean that all the details of our existence are described and explained; indeed, this is not at all the case. As a book of eternity it can never give a detailed explanation of the problems we encounter in life, for they come up, develop, and are solved according to the times, from the beginning of our existence until the end of the world. It really means that this holy book describes the basic principles, moral values, and general rules for our conduct.

For the greatest part it describes human history and human life in history. This was done to provide us with teachings, examples, and ideas (inspiration; *'ibrah*). As for verses dealing with legal matters, according to Imam al-Ghazali, there are only 500 verses in the Qur'ân (out of 6000) that discuss such matters, while the number of legal problems and cases in reality is uncountable. This is why the earliest detailed explanations on such matters are given in *hadîth*, reports on what the Prophet PBUH said and did, or in other words *al-Sunnah* (the tradition of the Prophet). The *hadîth* on legal matters are also limited in number. After the Prophet died, the Muslims had to base their practice on the interpretation of these holy scriptures. This is what later became known as *ijtihâd*.

According to Muslim belief, the Qur'ân, as a holy book, cannot contain texts that contradict one another, as they are the words of God Ever True (QS. al-Nisâ, 4: 82): "...There is nothing which is not correct in it, everything was handed down from God who is Ever Wise and Ever Praised...". QS. Fussilat, 41: 42 states that The Qur'ân is the last of God's decrees, presented to us by the last Prophet as well, and therefore it is valid for a long time to come, eternal, and for all mankind.

### Composition of the Qur'ân

The Qur'ân states very explicitly that it is a guidebook for people (*hudan li al nâs*), and meant to spread God's universal mercy (*rahmatan li al 'âlamîn*). This statement shows that the Qur'ân is a book, open to all people, to try to establish a way of life that brings mercy and prosperity. In general the idea of prosperity has come to mean happiness in this world and in the here-after. The idea of God's mercy stands for everything we see as good. Of course this should be a guarantee that all those human norms and values, such as love, justice, equality and prosperity are upheld. These norms and values are the outcome of convictions about or belief in the unity of Allah as the only highest authority in the universe.

There are more than 6000 separate texts (*âyah*) in the Qur'ân, divided in 114 major chapters (*sûrah*). These texts appeared among some of the Arab communities during the 7th century. The process lasted about 23 years and occurred in several stages, gradually, and not all in once. Although it took place simultaneously, it was also a transformative and progressive process. The Qur'ân's texts were composed in two very different socio-historic periods, known to experts as *Makkiyyah* (or Mecca-period) and *Madaniyyah* (or Medinah-period). The former ones originate in the time when the Prophet was still in Mecca, or before the historic journey to Medina (*hijrah*), while the latter texts appeared after the Prophet and his followers had moved to Medina. This is relevant, because we should be aware that the Qur'ân's texts are in a dynamic and interactive dialogue with the Middle Eastern ideas and cultures that had developed in these two very different social-cultural contexts.

Interestingly the Qur'ân's texts were not meant to totally destroy existing traditions, local customs and cultures. Rather they responded, and provided appreciative views on certain elements in the existing cultures, while it also formulated some highly critical views, providing an alternative cultural construction, based on some of the great ideals of mankind. In other words, the Qur'ân's texts appeared with the aim to set a process of cultural transformation in motion, without totally and thoroughly destroying the existing communities, but instead directed at shaping a new social construction that was better. In general we can say that the Qur'ân's texts deal with matters concerning the monotheistic (*tawhîd*), the here-after (eschatology) and other occurrences outside our daily perspective (metaphysics); they also describe the history of the cultures as

they had developed before the texts appeared, and (personal) religious observance. The latter includes rules for *shalât* (praying), *sawm* (fasting), *zakât* (alms) and *hajj* (pilgrimage). They also mention inter-human relations, both on the personal-/ family level (Family Law) and on a social-, political- and economic level, social ethics (morality; *akhlâq*). Most of the texts are further divided in three categories, i.e. concerning beliefs ('*aqîdah*'), religious observance ('*ibâdah*'), and social interaction (*mu'âmalah*). Convictions regarding God, the here-after and metaphysics we find in the first category; personal religious observance and rules for devotion in the second; domestic as well as public rules for (individual) conduct in the third category, or *mu'âmalat*.

Regarding this categorisation it is interesting to refer to the paradigmatic viewpoint of *Shaykh* Muhammad Madani in his '*Mawâtin al-Ijtihâd*'. According to him the texts that are part of '*aqîdah*', beliefs, are presented in a literary style that resembles objective information (*ikhbâr*). Examples of this are texts, statements almost, such as 'God is One', or 'There is no God other than Allah', and 'God has created paradise for those who believe and do well virtuously.' Also 'Muhammad is Allah's Messenger': these are examples of almost factual information, easily acceptable. God is regarded as being the One who brings us these messages (*mukhbîr*). He presents everything very manner-of-factly, reassuringly, and the Qur'ân doesn't give, but also doesn't need to give us the opportunity to question the concepts and ideas presented in these texts. It is as if Allah leaves it up to us whether we believe all this or not, of course with the respective consequences.

Here we need to look closer at the concept of belief. Regarding religious observance the Qur'ân uses the term 'creativity' (*ibtikâri*), with God and the prophets as its 'creators' (*mubtakir, munshi*'). In other words the texts in the Qur'ân define their own rules. Thus the rules for praying properly, for instance, such as standing, kneeling, reading *al-Fâtiha* or other Qur'ânic texts and so on are defined by God and His prophets (*shâri*'). The latter have also set the names of the various prayers, utterances, time for fasting and its proper execution, and the time and way in which one should make the pilgrimage and so on. All these things we just have to accept, without asking the reasons why.

However, in the third category mentioned above, concerning inter-human relations, God and the prophets sound more critically, acting like 'correctors' (*nâqid*). Here the texts are not very specific, but instead present general guidelines and basic principles. Society in Medina when the Prophet arrived there had already developed a long time before that, with its customs, social structure, and traditions. Therefore neither the Qur'ân's texts nor the Prophet's decisions supported prohibitions for- or changes in people's behaviour and their relations which were too radical. Instead only certain ethics and moral values were introduced, more as general human principles. Thus the Prophet formulated rules to prevent vices such as acting like a despot, beating people up, and acting unfairly ('*adam az-zulm*'); lying ('*adam al-gharar*'), gambling ('*adam*

*al-maysir*), acting rashly; and instead replacing it with ideas and behaviour that included respect for others (*tarâdi/ittifâq*), agreeing with others (rather than fighting out a conflict) and so on. The Prophet's motivation for his attitude in these and similar cases was that he was able to put a lot of trust in the existing views and attitudes; he has said that: "... (after all)... you know more about your world..." .

The religious experts (*ulamâ*) subsequently decided that in order to use the Qur'ân's texts as a guideline, a basic principle needed to be applied, namely that unless there was a rule prohibiting it, any inter-human behaviour and personal conduct was allowed.<sup>1</sup> Another principle they applied was that any rule for behaviour should be based on the meaning of the relevant text (of the Qur'ân), not its form.<sup>2</sup>

### Background to the appearance of the Qur'ân and its texts (*Asbâb al-Nuzûl*)

When we read the Qur'ân's texts literally it is very easy to arrive at the wrong conclusion, prohibiting us from arriving at the proper insights into some of the more abstract principles, such as those on universality and eternal truth. Also there is little space to include the idea that in society there are processes of change that influence and bring forth other, new developments in turn. Thus we need to be fully aware and have a good understanding of the texts' different linguistic, historic, and socio-historic contexts. Here it is interesting to point out Ash-Shathibi's viewpoint, an Islamic legal expert from Spain. In his well-known "*Al-Muwâfaqât fi Usûl al-Sharî'ah*" (N.D.) he has stated that for anyone studying the Qur'ân it is absolutely necessary to understand its historical background; ignorance in this field could lead to misunderstandings, problems, contradictions, and differences of opinion between people.<sup>3</sup>

He has described it as follows. According to Abu Ubaidah, Ibrahim at-Taimi once told the following story: one day Umar bin Khattab sat wondering why there were so many misunderstandings between Islamic people: "... Why, for there's only one Prophet, and there's only one direction to direct one's prayers?...". He decided to ask Ibnu Abbas, one of the Prophet's most faithful followers. The latter answered 'Well, Umar, the Qur'ân was handed down to us, and when we read it most of us know why and how this came about. Later, after we have read the Qur'ân, other Muslims too will read it, but they might not know how, when, and why the texts were handed down. So when what they discuss is only a later interpretation, they will all have different opinions. And when they disagree, it is possible that they (will) kill one another'. Umar cut the conversation short, because he didn't agree. So Ibnu Abbas left and just looked him in the eye. Umar thought Abbas' words over, and not much later invited him to meet again. 'Can you repeat what you've said earlier?', he asked. So Abbas repeated

<sup>1</sup> "al-aslu fi al-mu'âmalah al-ibâhah illâ in dalla 'alâ hurmatih".

<sup>2</sup> "Al-asl fi al-uqûd al-ma'âni lâ al-mabâni".

<sup>3</sup> Abu Ishâq Al-Shathibi - *Al-Muwâfaqât fi Usûl ash-Sharî'ah*; (N.D.): III/347.

his story, while Umar listened carefully. At last he had to agree and he held on to these words.

Shatibi has also argued that "... in order to understand the texts, which were written in Arabic when they were handed down to us, we need knowledge of the conditions involved in this process. We need to understand its context (*muqtadayât al-ahwâl*), the state of the language that is used (*nafs al-khitâb*), the possible author(s; *mukhâtib*), and the audience (*mukhâtab*) for whom the texts were meant... (therefore)... we need to know the wider context..."<sup>4</sup> In another part of his book Shathibi also stresses the importance of understanding the traditions and customs of the Middle Eastern communities regarding their language, behaviour, and patterns of interaction at the time the Qur'ân's texts appeared.<sup>5</sup> This latter statement clearly illustrates the importance of understanding the historic context of the communities who were the Qur'ân's first audience.

Long before Shathibi's work the 12th century Islamic scholar al-Ghazali (d. 1111) had already mentioned the same view. He stated that "... in order to understand the meaning of the texts we need to know the meaning of the language, which is composed with a purpose, and used for communication in society. We can do this either by trying to understand the texts themselves, or referring to other, comparable texts. We can also use our logic (rationality; *ihâlah 'alâ dalîl al-'aql*) and follow indications from the context, such as signs, symbols, changes, previous or simultaneous contexts, and other, limitless factors..."<sup>6</sup>

### **Texts from the Mecca- and Medina-period: *Makkiyyah* and *Madaniyyah***

Understanding the Qur'ân's historical background is therefore crucially important for our knowledge of it. We already know that some parts of the texts appeared in the period when the Prophet was in Mecca, while other texts appeared after he had moved to Medina. We can now appreciate the view that on the one hand the Qur'ân's texts are directed towards two different social contexts and audiences, while on the other hand the texts presented some very new ideas. Perhaps thus, in re-reading some of the texts, it becomes possible to describe the religious and social conditions of the pre-Islamic Middle Eastern communities.

Historical Arab sources in Mecca mention that in pre-Islamic times in the religious field people adhered to polytheism and paganism, meaning that besides acknowledging the existence of Allah, they also worshipped certain objects and other things besides Him. In this context the Qur'ân served to set the people free from these religious traditions, introducing them to a monotheist worldview (*tawhîd*). This belief had already been introduced to them by their forefathers, the prophets Abraham and ... , and the creation

<sup>4</sup> Abu Ishaq Al-Shathibi - *Al-Muwâfaqât fi Usûl ash-Shari'ah*; (N.D.): III/347.

<sup>5</sup> Abu Ishaq Al-Shathibi: III/351.

<sup>6</sup> Abu Hâmid Al-Ghazâlî, *Al-Mustasfâ min 'Ilm al-Usûl*, Maktabah al-Jundi; (N.D.) pp. 268.

of the Ka'abah, which was the place where they performed their polytheist religious rites. The belief in *tawhîd*, or unity of God, on the one hand stresses the principle of God's absoluteness, God as the ultimate authority in the universe, including mankind, and our human insignificance on the other. The first paragraphs in the Qur'ân describe that the texts that were handed down to the Arab communities in Mecca were aimed at, among others, making people think about the creation of mankind, and naming God. From this point on people should have become convinced that it was only proper to worship and to pray to God, and that all people were His creations, all equal in His eyes.

From a socio-cultural perspective both Arab history and the Qur'ân's texts provide much information on some of the practices that people adhered to at the time, which are called 'full of darkness' or 'lack of knowledge' (*jâhiliyyah*). Almost every day fights broke out between the various tribes. Consuming alcohol and playing around with women was customary. The relation between men and women at the time was highly patriarchal. In this system all decisions and truths were determined by men. Women were not valued in this system. They were marginalized, and men could do to them whatever they wanted. According to the Qur'ân's texts this was part of mainstream culture.<sup>7</sup> The practices and customs of pre-Islamic Arab society can be traced back to the traditions and culture of Mesopotamia (Iraq). In the ancient Hammurabi Codex (1752 BC) a strongly misogynist attitude and the subordination of women is mentioned clearly.<sup>8</sup> The Qur'ân's texts, when they appeared, did not directly or explicitly put an end to these cultural practices. They centred on presenting universal human values, such as equality among humans, freedom, justice, and human dignity.

Therefore we can conclude that the earlier *Makkiyyah*-period is when the foundations for a new social structure were laid, while during the slightly later *Madaniyyah*-period the new social structures were actually formed, shaped. Texts from the *Makkiyyah*-period are mostly concerned with describing and defining *tawhîd* and various universal human values, such as equality, justice, freedom, plurality and human dignity. It is not surprising that the readers are addressed using polite expressions that do not differentiate according to race, skin colour, gender or religious background. The religious scholars have established that the *Makkiyyah*-texts often use expressions such as "Hey people..." or "Hey you children of Adam...".<sup>9</sup> Different from the 'audience' in Mecca, the Qur'ân's audience in Medina were mostly people who already believed in a single God, like the Jews and the Christians, as well as those who were converted to Islam (*muhâjirin*). They were subsequently joined by many non-believers who pretended to be followers of the Prophet (known as *munâfiq*).

Thus we can see here that the texts from the *Madaniyyah*-period generally contain

<sup>7</sup> "al-tâbi' al-ghâlib" (general culture); in: A. Darraz, *Madkhal ilâ al-Qur'ân al-Karîm*; 1980: 130.

<sup>8</sup> Laela Ahmad (1992).

<sup>9</sup> "ya ayyuha an-nâs"; "Ya bani Âdam", as in verses (*ayat*) 13 and 17 of *surah* al-Hujurât.

paragraphs mentioning the new Islamic rules and regulations in more detail. These concern the law, both on an individual and a public level, and guidelines which regulate one's life in relation to others, for a society that already existed, cultures that had already developed. These paragraphs also contain suggestions and decisions concerning the fake believers and some of the other communities in Medina. Explicitly the *Madaniyyah*-texts talk about practical rules and regulations for society as it existed in Medina at the time, for the people who were already converted to Islam as well as those who adhered to their respective other religions. Some of the characteristics of the *Madaniyyah*-texts can be easily detected. There are some typical expressions to address the texts' audiences, like 'O, you Muslim believers...' ("*ya ayyuhalladhîna âmanu*") or 'You non-believers...' ("*inna al-munâfiqûn*"): the various social groups existing at the time are addressed separately, although not with the intention to discriminate.

The Qur'ân needed to address social reality and culture as it existed, including the discriminative attitude towards women. One good example of a *Madaniyyah*-text is *sûrah al-Nisâ* ('Woman'), which states in Indonesian that: "... Men are the leaders of women, because Allah has prepared some of the men better than some of the women and because they (the men) provide them (the women) with parts of their wealth..." (QS. al-Nisâ, 4: 34). Generally speaking this *sûrah* describes fairly detailed matters concerning marriage, divorce, inheritance, and more regarding the relation between men and women.

### More adaptations of the texts:

#### the theory of *nâsikh* (eliminating) and *mansûkh* (eliminated)

In reference to the Qur'ân's historic context and the differences in socio-cultural background between the *Makkiyyah* and *Madaniyyah*-texts yet another theory developed known as nullification (or elimination) and abolition (or renunciation).<sup>10</sup> Experts use it to explain that some of the Qur'ân's texts were meant to eliminate (-something),<sup>11</sup> while the use of others has been eliminated.<sup>12</sup> This theory developed among the majority of Islamic scholars because there were various contradicting texts (*âyat*) and their meaning could no longer be interpreted literally. It is, however, not uncontroversial. A well-known disagreeing scholar is Abu Muslim al-Ishfahani. According to this theory the *âyat* that are seen to eliminate (something) were handed down to us at some later point in time, while the paragraphs that have become disused were among some of the earlier texts. It illustrates yet again the relevance of the Qur'ân's historic, social, and cultural background.

Although we have no information on what the Prophet's views were on the

<sup>10</sup> Known as *Naskh*.

<sup>11</sup> *Nâsikh*.

<sup>12</sup> *Mansûkh*.

(theory of) eliminating and eliminated texts, the theory has become widely used among the Islamic scholars (*ulamâ*) of various schools of thought, and in the field of Law. This partly explains why there are differences of opinion, even disagreements among some of the *ulamâ* on their number and content. One's opinion depends directly on how much the experts still feel capable of constructing a compromise between some of these contradicting texts. Another fundamental question on applying this theory is whether a text's use to eliminate (something) or its elimination is a permanent change, or only for the time being, to be re-interpreted at some later time. For example let us consider the following. There used to be uncertainty as to the length of time that a widowed woman is obliged for to 'wait',<sup>13</sup> until it is considered proper for her to move about freely again, including to be (re-)married. One text mentions that this should be one year (QS. Al-Baqarah, 2:240), while another text, slightly earlier, mentions four months and 10 days (QS. Al-Baqarah, 2:234). On the authority of the *ulamâ* it was agreed that the earlier text serves to eliminate (*nâsikh*) the older one; therefore it defines a shorter period for a widow to 'wait'. The *ulamâ* describe this process as 'eliminating a rule, but not eliminating the text'.<sup>14</sup>

Another example, but more complicated, concerns the elimination of (the rule on-) punishment by means of the whip for widowed women who commit illicit sex. The logic behind this should be explained first: according to Islam, a person is only allowed to have a sexual relation with a spouse (i.e. his or her legally married partner), which makes it illicit for anyone to have sex with a person other than his or her legal partner. Here it is assumed that a widow/widowed woman is not married. In the Qur'ân as we are still reading it, it is mentioned that people who commit adultery will be punished by 100 whippings (QS. Al-Nur, 24: 2). However, most *ulamâ* agree that a widow committing adultery should be stoned. This is because there is a specific paragraph in the Qur'ân which mentions that stoning is the proper punishment: "...Older men and older women (who were married before), when they have a sexual relation, stone them as a punishment from God..."<sup>15</sup>. The statement that God handed down this paragraph on stoning is based on an explanation by Umar bin Khattab, who has said: "...Just in case people won't say that 'Umar has added a paragraph in the Qur'ân, be assured that I will write it with my hand..."<sup>16</sup>. This type of elimination is known as 'eliminating the text/writing, but not the rule'.<sup>17</sup>

However, various *ulamâ* have criticized it, like As-Sarakhsi from the Hanafi-school of thought, who argues that one can't have a law when it is not written down (*tilâwah*).<sup>18</sup> *Naskh* as explained here has been firmly criticized by several modern experts, like Nasr

<sup>13</sup> *'iddah* (waiting period).

<sup>14</sup> *Naskh al-hukm dûna at-tilâwah*.

<sup>15</sup> Sunan Ibn Majah, Kitab Al Hudûd, Hadîth 2543

<sup>16</sup> *Ibid*, p.35.

<sup>17</sup> "*Naskh at-tilâwah dûna al-hukm*".

<sup>18</sup> Badruddin Az-Zarkashi, *Al-Bahr al-Muhiith fi Usûl al-Fiqh* (2000): III/181.

Hamid Abu Zaid and Mahmud Muhammad Toha from Sudan before him. The latter has taken a rather extreme standpoint, saying that the texts from the period of Mecca could be replaced by the (later-) texts from the Medina period. The various texts of the Qur'ân, as mentioned before, are not supposed to contradict each other, and all are supposed to have an eternal meaning; so it is best not to eliminate some texts in favour of others.

In a more moderate view it is thought that a text which is suggested to eliminate (another-) text actually serves as an exception to a general rule (*takhsîs*). When two texts are seen as contradictory, each should be re-read separately, from a historic point of view or by means of closer textual and contextual reading. This actually makes good sense, because the Qur'ân's texts were handed down to us in different periods, with a different socio-historic background and, of course, different 'audiences'. This is reflected in the texts, which are meant to be 'read' by different 'readers' and decisions are meant to address different situations. Therefore *naskh* should be seen as a temporary solution, resulting from a different frame of reference, but which makes it difficult to implement it.

### **The Arab context (for women)**

According to the information obtained from the Qur'ân the general condition for women in the pre-Islamic Arab world was not favourable, in fact it was very bad. Women were seen to belong to a lower order of God's creatures; they were valued as objects, they could be 'inherited', and treated like any other slave (QS. 4: 19). They were not regarded as having any independent rights, not in their own life or in their relations with others. Their roles were limited to the domestic realm and to satisfy men's sexual needs. Several paragraphs in the Qur'ân mention that at some point it was customary, to kill and bury girl babies alive (QS. 16: 58-59; 81: 8-9): they were regarded as an economic load and brought shame to their family. However, this kind of reasoning was primarily found among the poorer and marginalised groups in society.

The reality of women's subordinate position is also mentioned in paragraph 34 of *surah* an-Nisa, which says that leadership in both the domestic and the public sphere is in the hands of men. According to the Qur'ân this is because "...men are slightly better than women and because they control the economy...". However, it is not explained any where explicitly in what sense men 'are better' than women, or if God gave them this lead for ever, unchangeable, or the opposite. Finally it was agreed among the experts who elaborated further on this text, that men were intellectually higher developed than women. As a result of this inequality, in this case on an intellectual level as well as economically, women did not have the right to participate actively in important matters, not in the home or in public. Umar bin Khattab has described this general condition for women in the pre-Islamic Arab world as follows: "...The pre-Islamic Arab

people didn't think much about or cared for the women. But as soon as their name was mentioned by God (in the Qur'ân), we became aware that actually they too have rights over us..."<sup>19</sup> These examples clearly indicate that the pre-Islamic Arab world was strongly patriarchal in its socio-cultural outlook. The Qur'ân was positioned on top of the existing social setting, aiming to create a new socio-cultural reality, one that was more civilized and just.

As mentioned above, the Qur'ân brought about changes in a non-revolutionary way; there were no total or instant changes, the process took place in a non-violent way. Even so a critical and intelligent reader of the Qur'ân's texts will find that it is very progressive, and in actual sense of the word 'too modern' for that age. We could perhaps say that the transformation as meant by the Qur'ân was generally a cultural transformation; where there was nothing, there appeared something, in an ever on-going process. This was not only applied to the question of the position of women, but in many other fields as well. Examples of such gradual changes we can see in the paragraphs that deal with alcoholic drinks (*khamr*) and interest (usury).

### Paragraphs on women in the Qur'ân

The arrival of the Qur'ân in a strongly patriarchal culture in turn had the logical implication that many of its expressions and much of the advice and suggestions are directed to a male audience. Even though some of the Qur'ân's suggestions are meant for both sexes, the language is often very male-oriented. Even so, in various parts the Qur'ân discusses many themes that are directed at and supportive of women. The texts can be divided in two main categories, i.e. particular ones and universal ones. In the universal texts men and women are addressed on an equal and fair level. In the particular ones the inequality that exists between them is described, where women occupy a subordinate position in relation to men.

These latter texts often concern practical rules and regulations for the division of labour, or defining men's and women's roles both in the domestic and the public sphere. They can also be seen as a means to support a changing patriarchal socio-cultural context, where certain elements had already been transformed and changes had taken place, or otherwise had been reduced. Thus where women initially had no value, in the Qur'ân they are described as fully developed human beings; where they were initially excluded from receiving an inheritance, the Qur'ân assigned them the right to obtain an inheritance (even though still only half the part of a male relative); and where they had no right to ask for or fight a divorce, according to the Qur'ân they most certainly had similar rights to men, and so forth.

The various *âyah* in the Qur'ân that mention matters concerning women are

<sup>19</sup> Imam Bukhari, *al-Sahîh*, VI/2197.

scattered over many paragraphs (*sûrah*), including for example Al-Nisâ; Al-Hujurât, 49: 13; Al-Mumtahanah, 60: 10; Al-Ahzâb, 33: 58; Al-Burûj, 85: 10; and Muhammad, 47: 19. These texts concern the creation of mankind and religious observances for men and women. There are also texts on how women should respond to giving alms on a personal and social level, such as in An-Nahl, 16: 97; Al-Mu'min, 40: 40; Ali Imran, 3: 124 and 195; Al-Ahzâb, 33: 35; and Al-Tawbah, 9: 72. On social and political roles there are QS. Al-Tawbah, 9: 71 and Al-Mumtahanah, 60: 12, texts that mention explicitly the equality of the positions of men and women and their respective roles.

Besides these there are various other texts, but more on practical matters and specific (particular) themes and problems. These include matters pertaining to marriage, proper ways to pray, divorce, inheritance, sexual relations, and legal cases (*ilm al-fiqh*), such as personal and family law,<sup>20</sup> as well as women's economic roles. We can also find texts on the division of labour, different roles and functions between men and women, most of which are in An-Nisa ('Women') and Al-Talâq ('Divorce'). Both of these are so-called *Madaniyyah*-texts, and most of these texts are divided over various *sûrah*.

In short, based on the themes and situations described in the Qur'ân, we should admit that women are still ascribed a subordinate position. For instance on leadership (*al-qiwamah*): there is an explicit text that says that 'men are the leaders of women'; women are being led, and therefore a woman should obey her husband. Also on inheritance rights: a woman has the right to an inheritance, but only half as much as her male relative (-s). According to S. M. Mulia (2006) there is a plausible explanation as to why a man (husband, son, or brother) has the right to a part of an inheritance measuring twice as much as that of his woman relative (a wife, daughter, or sister). The author argues that as a result of social circumstances men more often than not have a number of others economically dependent on him, so that his part of the inheritance needs to be divided further among his other relatives; while a woman's part is wholly hers, and she is entitled to do with it as she pleases. Therefore it makes sense, in a way, that she's entitled to a smaller part than her male relative (-s).<sup>21</sup> In the case of a divorce too: a husband can claim the rights to a divorce, while a woman only has the right to protest her husband's decision (*khulu'*). In the matter of marriages as well: there are various texts mentioning that a woman needs a (male) representative for the marriage to be legal, while a man does not need a representative.

### **An re-interpretation of the Qur'ân's texts: gender perspective**

The subordinate position of women is based on the texts found in QS. Al-Nisâ, 4: 34 and QS. Al-Baqarah, 2: 228, concerning men's authority over women. When we read these texts literally, without being aware of their context or their connection to other

<sup>20</sup> *Al-ahwal al-shakhsyiyah*.

<sup>21</sup> Siti Musda Mulia (2006), *Tawhîd: a source of inspiration for gender justice*

texts, it is easy to conclude that God made men the leader, the authority, the controller, and the teacher of women, while women are to be led, restrained, to be controlled, and to be taught. In many subsequent interpretations of the Qur'ân's texts this has become the basis for legal matters (*tashrî'*) underlying the relation between men and women. A serious weakness of these further interpretations is that they. They have become fixed, as if the text is for ever valid (i.e. normative), instead of functional. When we are more aware, we can in fact see that these texts contradict those from the Qur'ân's basic texts on the equality of mankind. Thus here we have another clear example of contradicting texts, where the principle of inter-human equality on the one hand seems to clash with the subordinate position of women on the other. This should not be possible, unless the theory of *naskh* (elimination) or *takhsîsh* (exemplifying) has been applied. I think we should see an-Nisa [34] as an example of *takhsîsh*, or a text that appears in contradiction with and serves as an exception to another one, in this case the basic idea of human equality.

To formulate an exception to a general rule in the Qur'ân was done to address a specific context, in this case on a social and historical level. When we read the text (on the subordinate position of women) attentively and in detail, it in fact describes the existing, strongly patriarchal situation of those times. Men's leading position over women in the social reality of that period had to do with some sort of superiority on one level, and their economic responsibilities on another. Even though the Qur'ân does not give a definition of 'superiority', both modern and traditional experts have interpreted it as mental-, or intellectual superiority and physical strength. Experts have, unfortunately also argued that this 'superiority' is a fixed, set element, created by God, which supposedly holds for every man. But the main motivation for this latter interpretation they have based on other sources, such as the mythological history of the fall of Adam and Eve from paradise. Imam Ibnu Jarir al Thabari, the teacher of all interpretative experts has stated in his *Jâmi' al-Bayân fi Ta'wîl Âyi al-Qur'ân* that Adam was ousted from paradise because of Eve. That is why God punished her with monthly periods (menstruation), ignorance, and pain upon giving birth.

This view receives its legitimate basis from one of the Prophet's texts (*hadîth sahîh*), where he has said: "... I can see no-one who has a lack of religiosity and intelligence except you (women)..." The 'lack of intelligence' referred to here, according to other experts, is based on the idea that a woman's testimony is only half as convincing as a man's; and a woman's 'lack of religiosity' is based on the idea that during her period she is not obliged to perform the otherwise obligatory daily prayers. The Prophet's expression has subsequently acquired the meaning that these elements are part of any woman's unchangeable fate.

This is truly different from the Qur'ân's own language. In the Qur'ân it is mentioned in a normative way, as if this superior quality has been stuck on to all men, but in a

relative way: "some are (superior) over some others". The word 'some' could mean in a general situation, in some cases, or 'mainstream'. Because we can't reject the reality that there was a number of women who were intellectually and economically superior to some of the men, supporting their family, including some of the Prophet's wives, like Siti Khadiyah and Siti Aishah, just to mention a few. In the Qur'ân there is no mention of superiority defined or limited either by gender or another cultural background. In QS. Al-Hujurât [13] it is stated clearly that one's excellence, one's superiority is only based on his or hers quality of devotion (*taqwâ*). The theme of devotion and piety itself can not, according to this author, be separated from the attitude of consistent appreciation of religious and human norms and values, given form in the activity of personal and communal religious service. This can be done by men as well as women. When women are not obliged to perform their daily prayers because they have their period, it certainly doesn't mean that they lose some of their personal quality.

Now it becomes clear too that the idea of leadership, based on an assumed criterion of men's superiority, is in fact something quite relative, strongly related to a society's socio-cultural structures. Anything connected to a social or cultural structure cannot be valid for ever or final because it depends on something which itself is dependent on change and development. Therefore 'a man's superiority' is a relative term, which can either change or become changed. The social changes happening around us in this day and age are a sign that we are in the middle of a process where first 'there was none, but soon there will be', and from 'something now' it will become something that is generally accepted or 'fixed'. We can therefore safely assume that some women are superior to men, and that their role in- and outside the household will become revised.

It is interesting to express here how the Qur'ân holds a dialogue and appreciates social reality through this text (QS. Al-Nisâ, 4: 34). This we know for instance from the way it was handed down to us, its socio-cultural background (*sabab nuzûl*). Imam al-Suyûti has mentioned various *riwâyat* (written texts based on the Prophet's formulations), for example the one from Hasan, via Ash'ats bin Abd al-Malik. It concerns a woman who visited the Prophet to complain about her husband's improper behaviour: he had beaten her and she was seriously bruised. The Prophet advised her to avenge herself, but evenly (*qisâs*). But here the text ends, and we don't know about the woman's revenge. Al-Suyûti has mentioned the same text, but via Qatadah; here we can find the Prophet saying that "...I want something, but Allah wants something else...".<sup>22</sup> The same expression can be found elsewhere, as in the text that is mentioned by al-Nisabûri. It was written down as a response to the case of Sa'ad bin ar-Rabi' and his wife Habibah bt. Zaid bin Abu Hurairah. It began when Habibah did not obey her husband (*nushûz*) and he beat her. Her father took her to meet the Prophet and presented this case to him. At first the Prophet advised her to avenge herself, but evenly; after receiving this

<sup>22</sup> Abdurrahman As-Suyuthi, *Ad-Durr al-Mantsûr fi at-Tafsîr bi al-Ma'tsûr*; pp. 11/151.

advice, the two of them left. But the Prophet called them back and said: "...Gabriel (the archangel) came here to give us the revelations that are written in the Qur'ân... (and)... I had wanted [you to do] this, but Allah wants something else and the will of Allah is of course better..."<sup>23</sup>

The information from al-Suyûti and al-Nisabûri illustrate the Prophet Mohammed's sincerity in implementing the principle of equality and justice directly and on-the-spot, but that God wished to apply it in another way. In reading the whole text it becomes clear that God wanted to implement it gradually, and not on-the-spot. The proper attitude towards a woman who did not obey her husband was carried out through a process of reversing the tradition. Where it was customary to first beat her, then insult her and to inflict wounds on her, according to the Qur'ân it was better to take a phased approach: first to reason with her, then not to listen to her any further, and only as a last resort to slap her.

On the matter of beating a woman, as mentioned in the Qur'ân, the Prophet explained that it should not be too hard, let alone result in a wound. The Prophet himself has never harmed any of his wives, let alone beaten them. He has said that "...All the husbands beating their wife, those aren't good people among you...", and "...Don't you beat any of Allah's woman servants..." Here too we should really say that the way in which punishments are carried out, according to the Qur'ân, are really ways to reduce, or to minimize the bad effects of a previously existing, customary situation.

Luckily the new ways as expressed in the Qur'ân were not met with resistance and strong protests from society. In the words of Nashr Abû Zayd: "...For sure the Prophet's rejection of this husband's behaviour shows his firm belief in justice and equality. But because the audience at the time was not able to understand, let alone support this principle, God gave us this text..."<sup>24</sup> Using the logic of reducing an existing custom we can understand that the Qur'ân in fact does not agree with either act of beating or any violence directed against women, in whatever form, and that it needs to be abolished. In this day and age an act that is considered 'wrong' or mistaken, performed by either a man or a woman, especially between a husband and a wife, should be solved in a more civilized way, more democratic, and without violence.

Reading the texts' socio-historic and cultural background (*sabab nuzûl*) the experts came up with the theory that reads that 'what is important and needs to be applied is the form of the words in general and not the cause or the specific occurrence described in that text';<sup>25</sup> thus in QS. Al-Nisâ, 4: 34, the specific cause/case is the beating of a woman named Habibah bt. Zaid by her husband, Sa'ad b. Rabi'. According to the rule presented here, any woman could be beaten by her husband for disobedience; which is why in

<sup>23</sup> An-Nisaburi, *Asbab an-Nuzul*, in: *Mukhtasar Tafsir ath-Tabari*; p.118.

<sup>24</sup> Nashr Hâmid Abu Zaid, *Dawâ'ir al-Khawf; Qira'ah fi Khitâb al-Mar'ah*; 1999: 212.

<sup>25</sup> "al-'Ibrah bi 'umûm al-lafz lâ bi khusûs as-sabab"

the texts of most textual and legal experts we find the same general punishment for a disobedient wife, regardless of the context. Moreover, most textual experts agree that when there is a difference between a more general case and a specific case, the specific or particular case is preferred to the more general one. However, this is strongly criticized by someone like Abu Ishak al-Shâtibi, who says exactly the opposite: "...A general rule or universal law has a fixed meaning, while particular, or specific rules and regulations are relative... Therefore a general guideline should receive our fullest attention... Rules that are particular or specific should not limit or particularize general rules. (But they) could serve as conditional exceptions to a universal law..."<sup>26</sup>

### Examining the causality and meaning of texts

There is another opinion too, although not supported by many *ulamâ*. It is contrary to the one mentioned above, and reads: 'that which deserves our full attention or should be used is the particular cause is important, not the general form (of a text, *lafzh*)'.<sup>27</sup> When seen from this perspective, the case of Habibah bt. Zaid being beaten by her husband only has value for this individual case, and does not pertain to other women. Of course any individual case could become an example ('initiative') for other cases, or for developing new legislature for future cases. But it could as well be changed, adapted, when other ways are found to deal with the problem, depending on and influenced by social change.

Here it is best to address the difference between the terms *sabab* and 'illah. The first term refers to something's background, one or more elements that are usually positioned outside a text, which often concern matters that have happened and which are the reason why a certain text (*âyat*) was composed. 'Illah refers to the logic used for a law's causality. 'Illah is part of the text, and answers the question why a law is formulated the way it is. It differs from the resolution offered by a law, or ruling (*hikmah*), which is any law's ultimate aim. Within the field of Islamic law these three terms, i.e. *sabab*, 'illah, and *hikmah* are still and have always been matter for debate among Islamic scholars (*ulamâ*), who are for ever discussing the similarities and differences between the terminologies.<sup>28</sup>

What is most important in legal matters is the relation between legal-rational considerations and a verdict's ultimate aim. Legal-rational considerations – borrowing the term from Fazlurrahman - on leadership for example include intellectual and moral capabilities and responsibilities in relation to the people's prosperity, or of one's family; while the temporary aim is to guarantee benefits for either one's family's or society as a whole (depending on the context of the particular case). Legal-rational considerations

<sup>26</sup> Al-Shatibi, *Al-Muwâfaqât*, III: 261-271.

<sup>27</sup> 'al 'Ibrah bi khusûs al-sabab lâ bi umûm al-lafzh".

<sup>28</sup> Muhammad al-Arusi, *Mas'alah Takhsîs al 'Am bi al-Sabab*; 1983: 33.

and providing benefits is closely connected to social dynamics and dialectics. There is an important legal maxim (*qâ'idah fihiyyah*) that says that the law always follows legal-rational considerations.<sup>29</sup> According to Mawla al-'Allai laws are really based on the legal-rational considerations of 'illah, and once the latter has disappeared, laws too will disappear.<sup>30</sup>

When legal-rational considerations, and the definition of a society's prosperity change, as a result of a developing social context and culture, legal decisions too will undergo changes. This is supported by Ibnu al-Qayyim al-Jauzaiyah's formulation, one that also has become an important legal maxim (*qâ'idah fihiyyah*). He has said that changes and differences in legal decisions are dependent on and influenced by changes in time, place, situation, motivation, and customs.<sup>31</sup> Furthermore, in the opinion of Khalid Abu al-Fadl any law's true aim can only be realized when one considers a case's rational and empirical implications, not its relation to the textual ('scriptural') truth.<sup>32</sup> He has argued that social reality is a fact, fixed, while a text is hypothetical and gives the opportunity for (re-)interpretation and logical analysis. When we move an existing text from its initial social space into another, it is possible that it loses its moral aim. But such a conservative attitude does not always result in finding a solution to a problem. It could alienate a text from the process of (social-) change, resulting in its becoming obsolete. We need to be reminded here that interpreting a text only based on its literal (textual) meaning without looking at the global aims of religion will result in a 'dry' and superficial understanding, with a real possibility of becoming irrelevant and without providing any benefits. Since this is exactly what we should avoid, we should learn to read from and using a text's context.

### Linguistic approach

Besides a contextual approach other approaches are possible too, for instance analyzing the meaning of the language used. Here we assume that the language used in a text does not stand on its own and has not developed in a vacuum. The meaning of the language used in a text can definitely undergo changes. For instance concerning the text on the leadership of men as mentioned previously. One of the key terms (in Arabic), *ar-rijâl*, is usually translated in Indonesian with "man", without any further information what kind of a man is meant: is he seen from a biological, or gender perspective, i.e. young? old? experienced? puberty? It has been agreed that this term has a gender connotation, comparable to the (Arabic) word *al-Nisâ*, usually translated as 'woman'. The biological connotation of the word 'man' is expressed in the Qur'ân as *al-dhakar*; it appears a number of times, at least in 18 different texts, and it refers to 'man' as a biological

<sup>29</sup> "al-hukm yadûru ma'a illatihî wujûdan wa 'adaman".

<sup>30</sup> In: Subhi Al-Mahmashâni, *Falsafah at-Tashri' fi al-Islâm*; 1968: 222.

<sup>31</sup> Ibnu al-Qayyim al-Jauzaiyah, *Al'âm al-Muwaqqi'in 'an Rabb al-'Âlamîn*; 1968: III/3.

<sup>32</sup> Khalid Abu al-Fadl, *Melawan Tentara Tuhan*; 2003: 155.

creature. For the biological connotation of the word 'woman' the Qur'ân uses *al-untsâ*. Other terms, also referring to a woman are *al-mar'ah* and *al-imra'ah*. Although these words have a similar meaning, according to Ibnu Anbari they usually refer to a grown up, or 'ripe' woman.

According to Nasaruddin Umar the term '*al-Rajul*' too has a different meaning from *al-dhakar* because all those who are considered *ar-Rajul* are also *adz-dzakar*, but not all those who are seen as *al-dhakar* are also *al-rajul*. Similarly, the terms *mar'ah/al-imra'ah* and *al-nisa* do not refer to the same group of women as those who are called *al-untsâ*: all those who are considered *mar'ah/al-imra'ah* and *al-nisâ* are also regarded as *al-untsâ*, but those belonging to the latter category are not necessarily also part of those called *mar'ah/al-imra'ah* and *al-nisâ*. The male term *al-rajul* and the woman's terms *mar'ah/al-imra'ah* and *al-nisâ* are used to refer to those who fulfil certain social and cultural criteria, such as age (being an adult) and having a household, or having a certain role in society.<sup>33</sup>

A similar linguistic analysis is applied in translating the term *wadribûhunna*, used in one of the sentences of Al-Nisa (4: 34) and usually interpreted as 'slap them with your hand'. However, some of the other words there, like *daraba*, have more than one meaning. According to Ar-Râghib al-Isfihâni in his *Mu'jam Mufradât Alfâz al-Qur'ân* it can mean 'making a journey' (in Al-Nisa (4: 101), Taha (20: 77); 'to set (an example)' (in QS. Al-Tahrim, 66: 10), Yasin, 36: 13), Al-Baqarah (2: 26), Ibrahim, 14: 25); 'to make a road' (in QS. Thaha, 20: 77); 'to cover', as in 'to cover one's face with a veil' (in QS. Al-Nur, 24: 31) and 'we covered their ears several years in that cave' (QS. Al-Kahfi [18]: 11) – although the latter text has also been interpreted as 'we slept with them',<sup>34</sup> to which it was added that "...when one reads this text literally, it is impossible to understand...".<sup>35</sup> Finally it can have the meaning 'to befall/to be overwhelmed', as in 'they were overwhelmed by humiliation' (in QS. Al-Baqarah, 2: 61). The term *Al-Mudârabah*, a derivation of the above '*daraba*', refers to an Islamic economic transaction, where there is a sharing of profits. In contemporary Arabic it also means 'to act firmly', as in 'the government will take firm action against those who manipulate prices'.<sup>36</sup> Lately it has acquired the meaning of 'strike' ("*al-idrâb*").

Ahmad Ali, one of the modern Qur'ân translators, disagrees with the classical interpretation, and argues (according to Ashgar Ali Engineer) that according to the Qur'ân it is not allowed to beat a woman. Referring to ar-Raghib al-Isfihani's *Al-Mufradât*, he says that *wadribûhunna* (does not mean 'to slap' or 'to beat' but; ) means 'to go to bed with them'.<sup>37</sup> According to most interpreters this is rather curious, because it is not supported by any other case that can serve as an example, as explained above.

<sup>33</sup> Nasaruddin Umar, *Argumen Kesetaraan Jender Perspektif Al-Qur'an*; 1999:172.

<sup>34</sup> According to Ibnu Qutaibah.

<sup>35</sup> Ibnu Qutaibah, *Ta'wil Mushkil al-Qur'ân*; p. 21.

<sup>36</sup> As in: "*darabat ad-daulah 'alâ al-mutala'ibin bi al-As'âr*".

<sup>37</sup> Ali Asghar, *Hak-hak Perempuan Dalam Islam*; pp. 75-76.

Also in ar-Raghib al-Isfihani's *Al-Mufradât* I have not been able to find a reference to this particular interpretation. Another, more logical interpretation has been formulated by Mohammad Shahrur, who thinks that *daraba* here means 'to act firmly towards them'.<sup>38</sup> Firm action, in this case, however means to negotiate a solution (arbitration). This is similar to the term used in another part of the text (al-Nisâ, 4: 128) that also concerns disobedience (*nushûz*), but here from a husband towards his wife: "...And when a woman is worried that her husband will disobey or neglect her, then there is no harm for both of them to search for reconciliation...". Very similar to Ahmad Ali, Shahrur is not concerned either with the background, or the reason for *nushûz* of this particular case/text. In other words we could say that this is a a-historic approach. It is better to speak of a linguistic approach, in which Shahrur's "to act firmly towards them" is more in accordance with a contemporary context. Non-violence is more highly valued on the one hand, and on the other it is more relevant from the point of view of gender equality and justice.

### The religious ideal of justice

The Qur'ân's texts which mention the relations between men and women, particularly the rights and responsibilities of married couples, are regarded as specific or particular texts. Reading these texts we become aware that the Qur'ân's texts were in fact aimed at regulating the existing Middle Eastern context of the relation between husband and wife at the time, in ways that were considered better than before. Therefore we should understand these texts as part of an on-going process of change, where one culture was being replaced by another, newer and much better one.

The Qur'ân names itself as a way 'to deliver mankind from a life of darkness to one full of light'.<sup>39</sup> By creating a basis for reading its texts including their context, we are inspired to develop this contextual reading all the time, looking for ways to fit them to our own context, or yet another one, at a later day and age. This we do to implement our religious ideals into the life of our society. The ideals of Islam, as formulated above, are justice, honour, beauty (wisdom) and prosperity. Ibnu al-Qayyim has stated very clearly that Islamic law (*Shari'ah*) is based on the people's wisdom and prosperity, during our life here-and-now as well as the here-after. According to him *Shari'ah* is justice, mercy, prosperity, and wisdom. Decisions deviating from all of this form no part of religion, no matter how much intellectual effort is used.<sup>40</sup> In another publication he has said that "...Allah has delegated all the Prophets and handed down His scriptures in order to establish justice in society. Justice is a pillar of Heaven and Earth. Where one can see signs of justice, in whatever way, there we find the law of God...".<sup>41</sup>

<sup>38</sup> Muhammad Shahrur, *Al-Qur'ân wa al-Kitâb, Qirâ'ah Musâshirah*; p.622.

<sup>39</sup> "yukhrijuhum min azh-zulumât ila an-nûr".

<sup>40</sup> Ibnu al-Qayyim, *I'lam al-Muwaqqi'in*, III : 3.

<sup>41</sup> Ibnu al-Qayyim, *ath-Thuruq al-Hukmiyyah*; 1986: 38-39.

Earlier on Imam al-Ghazali already argued that one can conclude that the vision or aim of religion lies in what is known as 'prosperity'. But in his interpretation it specifically refers to respect for human rights. We need to ask ourselves again whether women are limited to their role in the domestic sphere, or have a public role too, and whether women's rights are only half as much, in some aspects, as those of men, and so on. In order to address these and other questions we need to return to our religious texts and (re-) evaluate some of them, based on contemporary and democratic normative Islamic norms and values, as we implement them in this day and age.

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وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمُ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُم مِّثَاقًا غَلِيظًا ﴿٢١﴾

“...And how could you take (her legitimate part of the bride-price) even when you have already been intimate (i.e. had sex) with each other, and they have received it from all of you after the (nuptial) agreement?...”. (QS. Al-Nisâ, 4: 21).

# Interpreting Hadith 5

According to the Hadiths, women are men's associates

Yeah.... this Hadiths should be heard by all muslim





**T**he material in this section concerns and explains the texts which reflect the words, deeds, and decisions of the prophet Mohammed, usually known as hadith. It examines some of these texts as a source of Islamic legal rules and regulations. In this section we will learn about the formation of the hadith, their subsequent transfer to later audiences, and the processes involved in writing them down and interpreting them. In applying certain methods the Hadith can be re-read and re-interpreted, offering different views which serve to support the empowerment of women





### OBJECTIVES

After finishing this section the participants are able to...

- understand the relevant terms for the study of *hadîth*;
- know the position and qualification of a *Hadith*, and the consequences in regarding them as a base for legislature;
- understand the quantification of a *hadîth*, and the consequences for their use as a legal base;
- understand the meaning of a *hadîth*' transmission (to subsequent generations) and the involvement of women in this process;
- understand the methods used to interpret a *hadîth* as part of the development of different Islamic legal schools of thought;
- understand the methods used to arrive at a *hadîth*'s interpretation;
- learn about the method which is used to interpret a *hadîth* from a non-biased gender perspective.



### POINTS FOR DISCUSSION

- Basic terms used for the study of *hadîth*, such as *hadîth*, *sunnah*, *khobar* and *athar*, *asbâb al-wurûd*, *rawiy*, *sanad*, *matn*, *adil* and so on;
- Position and qualifications of a *Hadith*, i.e. texts that are regarded as legally valid (*sahîh*), 'good' (*hasan*), or 'weak' (*da'îf*: inappropriate as base for legislation);
- Quantification of a *hadîth* and its consequences as a base for legislation;
- Rules for transmitting a *hadîth* and the involvement of women in the process of transmission;
- The rules for interpreting a *hadîth* according to the different schools of thought in legislature (*madhhab fiqh*), i.e. when it contradicts something from-, or in the Qur'ân or other *hadîth*, when it does not seem logical or make sense (*'aql*), *amal ahl madînah*, *râwi ghairu faqîh*, *'umûm al-balwa*, not in tune with reality;
- Methods for interpreting a *hadîth*, as seen from the works of some of the classical scholars (*ulamâ*) as well as the more modern ones; among them are scholars such as al-Ghazâli, al-Qarâdhawi, al-Idlibi and Jamal al-Banna;
- Re-interpreting some of the more infamous texts on gender, including issues and expressions such as 'the creation of man', 'the

majority of women are in hell', 'women can postpone the obligatory prayers (*salât*)', 'women bring bad luck, are not intelligent, and non-religious', women political leadership, damnation as a result of refusing to have sex, the 'totality' (*sujûd*) of obeisance to a husband, the necessity of a representative for legalizing a woman's marriage, the (im-)possibilities of asking for divorce, (the status of-) a woman's bride price, and other problematic topics;

- Principles of gender equality and –justice in the *hadîth* texts;
- Methods to guarantee that the interpretation of a *hadîth* is not gender-biased.



### METHOD

Game; discussion; input from an expert/speaker; questions-and-answers.



### TOOLS

Sticky cloth, markers, plain paper, coloured cards/pieces of paper, cello tape.



### TIME

4 Hours.



### STEPS

*First stage (1 hour):*

1. The facilitator begins this session with either one of the two games, i.e. '**Chain Message**' or '**Multi level message**', explaining the rules (See: illustration 5);
2. As part of the game(s) divide the participants in two groups, together with the other facilitator (s) and/or members of the organization. After the game has finished, the participants return to their seats;
3. Group discussion on what you have just done (the game), both on the process and the outcome. Formulate answers to the following questions:



- Which elements played a role in the process of transmitting the message?
  - What was the difference, if any, between the first, the second, the third, all the way on to the last person to receive the message?
  - Which factors influenced the message's transmission?
4. The facilitator makes notes of the participants' answers, categorizing them according to the three previously set questions. The answers should then be given the appropriate term from those based on the study of *hadîth*: using *matn*, *sanad*, *râwi*, and *hadîth ahâd-mutawâtir*, and an analysis of the meaning of *hadîth* texts.

**Second stage (1½ hours):**

5. The facilitator introduces the speaker, who presents the lecture on *hadîth*;
6. The speaker explains the diagram explaining the processes of transmission of the *hadîth*, including the *sanad* and *matn*, as a source of reference, and presents a gender-biased text. This can start with a discussion of one of the more 'infamous' text, such as "women being a source of bad luck", which was initially transmitted by Abu Hurairah and subsequently strongly rejected by Siti Aishah. This illustrates that a). the transmission of an original text often takes place in a complicated way; b). its reception (by an audience) can be varied, and c). its perception and interpretation give rise to different

levels of understanding;

7. The *hadîth* presented in the previous step should be presented as a fully accepted text, complete with its *sanad* and original source of reference (*kitâb*), and should serve to explain some of the key concepts for the study of *hadîth*, including words like *matn* (meaning), *sanad* (line of transmitters), individual *hadîth*-transmitters, *kitab hadîth* (collections, or books containing *hadîth*-texts), texts based on the deeds, words, and decisions of the Prophet (*hadîth*), the similarities and differences with texts known as *sunnah*, *athar*, and so on;
8. The speaker explains the different qualifications of a *hadîth*, i.e. being considered *sahîh* (legally valid), *hasan* ('good'), or *da'îf* ('weak': inappropriate to use as a legal basis), and discusses the origin of these terms, when they became more widely used; how they are applied to existing texts, and which ones have become acceptable for all Muslims;
9. The speaker explains the position of the Prophet when certain *hadîth* were compiled: was he speaking as a prophet, a religious or political leader, or a husband?
10. The speaker discusses the position of *hadîth* in the development of Islamic legislature; pointing out some of the differences that exist between the various Islamic scholars (*ulamâ*) concerning the position of the *hadîth* compared to the Qur'ân, and the consequences of these differences in formulating legal rules and regulations. Next the speaker introduces and explains more terms, including *hadîth mutawâtir*, *mashhûr* and *ahâd*; as well as the difference between the various *ulamâ* in using them as a basis for Islamic law;
11. The speaker explains how the critical study of a *hadîth*' *sanad* and *matn* works in the classical *ulamâ*'s efforts of ascribing meaning to a *hadîth*-text, and how the same method can be applied to re-interpret some of the gender-biased *hadîth*. Here the speaker can introduce the critical methods as developed by Imam Abu Hanifah, Malik bin Anas, Ibn al-Qayyim, and lastly Shaykh Muhammad al-Ghazâli and Yûsuf Qarâdhawi.
12. The speaker finishes this part of the session by presenting some of the *hadîth* which appeared and strongly support the interests of women.

*Third stage (1½ hours):*

13. The facilitator / moderator gives the participants the opportunity to ask questions, and formulate their ideas, opinions and comments on the topic of *hadîth*;
14. The speaker tries to formulate conclusions, this time based on a women's perspective. This can be, for instance, examples of their role and involvement in receiving some of the *hadîth*, but also in transmitting them, and interpreting *hadîth*; or it can focus on those concerning issues that are relevant to-, or touch upon matters that concern women.

The conclusions arrived at in this section will, at a later stage become part of the discussion on laws, rules and regulations, or *fiqh* for women.



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### Notes for the facilitator / speaker

- ✓ *The facilitator needs to prepare a translated hadîth-text, which serves as basis for the 'Chain message'-game.*
- ✓ *The facilitator also needs to prepare the diagram of Hadîth-texts on women's issues, complete with their sanad (line of transmission) and original source (place), but which has a different matan (interpretation or meaning) of the same topic. It should be one topic, with a contradicting or different meaning (See: illustration # 6 [Hadîth transmission] and # 7 [Variations in Hadîth transmission: sanad and matan]).*
- ✓ *Prepare examples of various Hadîth which have a different degree of validity, i.e. sahîh (legally valid), da'îf (inappropriate as a legal base), and mawdû' (invalid; false).*

Illustration 5:

**I. GAME:**

**‘Chain Message’**

**Needed: at least 20 players, and involving all the participants, the facilitator (-s), and the organizers together.**

- The participants are divided in two groups, with a minimum of 10 players in each group. When the participants are uncomfortable playing in mixed groups, the groups can be divided according to gender (men vs women); otherwise, if there are no feelings of gender antagonism, just split the participants, the facilitators, and others from the organization up in two.
- Emphasize that this is a competition between the two groups: the group finishing first, before the other, is the winner and will receive a prize from the organization.
- Ask the members of each group to form a line, one behind the other; there is one step between each member.

**Now begins the game:**

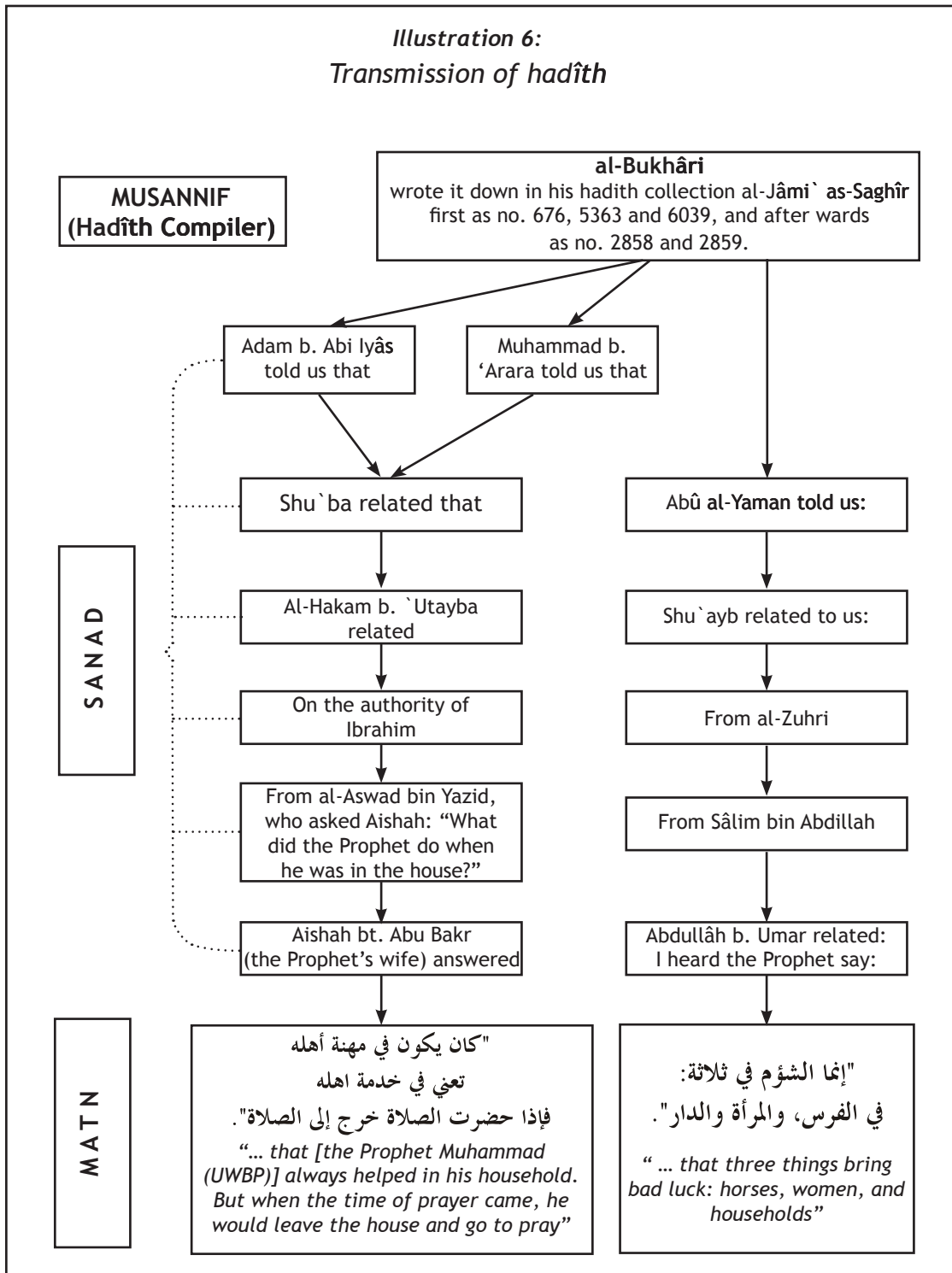
- Ask the last person of this line to silently **read the Hadith-text** (that was prepared by the facilitator); next she/he should **whisper** this text to the person standing in front of her/him, without anyone else hearing it.
- The next person is also asked to whisper the text **as heard/understood** from the previous person to the next person standing in line.
- This process is repeated by every person standing in the line of each group, until the text has reached the first person of the line.
- This person, who is the last person to receive the text, is asked to write down on a piece of plain paper what she/he has heard.
- The group that has finished writing down the text first may now applaud, as a sign it has finished; the other group should also still try to finish its message.
- When the texts have been written down, everyone returns to their seats.

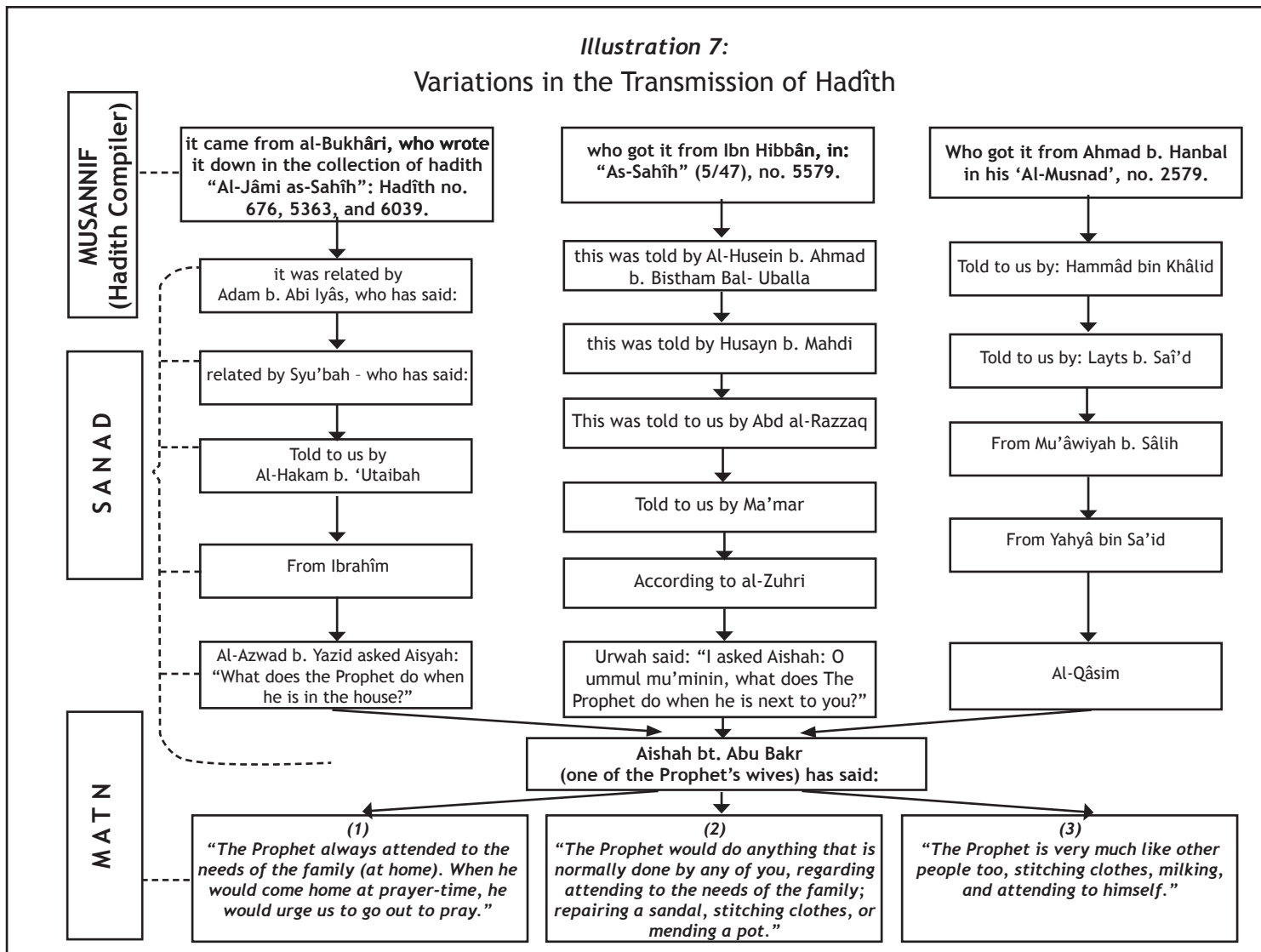
*Illustration 5:***II. GAME:****'Multi Level Message'**

**Needed: 16 players for the full game. If there are fewer players, one should omit one of the levels of the game. Include all the course participants, facilitator (-s), and organizers.**

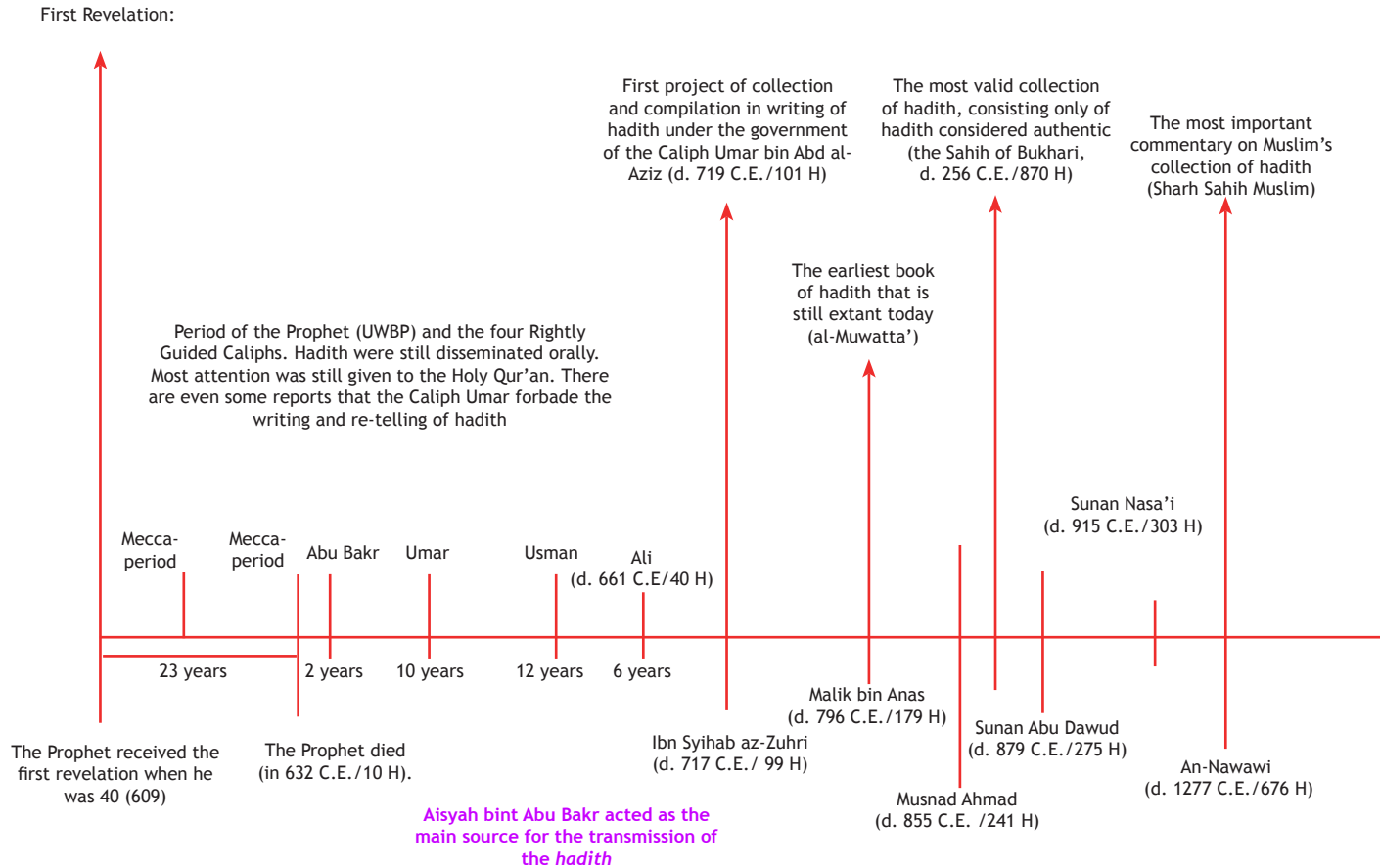
- Form two groups of 16 players.
- Emphasize that this is a competition between the groups: the one finishing first is the winner, and will receive a prize from the organization.
- The members of each group are given a differently coloured card, for instance green cards and red cards (or any other colour). The cards serve as an identity card, but also to make clear to which level one belongs. When the players know each other's names they don't need to be one's real name, it can be an alias.
- The members of each group now divide themselves in different levels. There is one person at level 1; two persons at level 2; four persons at level 3; eight people at level 4; one person at level 5.
- The players should all be aware of who it is they **receive** a message from, and what the message is that they should **transmit**.
- Each player now transmits a message to a person at the next level, but the information should include whom they got the message from, from all previous levels. Here the players can use their own name, or an alias. The message should be transmitted through all the levels, until it reaches level 5.
- The players at level 4 should each take turns and transmit their message to the player at level 5, mentioning who transmitted the information in the first place, and who was involved in receiving/transmitting it next, and so on.
- The player at the last level, level 5, collects the various messages, complete with their additional information, i.e. who were its receivers and transmitters.
- The player at level 5 decides which of the messages is the most authentic one, and writes it down on a piece of plain paper.
- This is the end of the game. The player at level 5 of the group who finishes first in writing down what she/he thinks is the most original / authentic message with the other members of this group applauds to signal that they have finished first.
- The participants return to their seats.

**Illustration 6:**  
**Transmission of hadîth**





### Illustration 8 Timescale of the transmission of the hadith



dawah fiqh concerning women

## **Differences in time and place: the need for a re-interpretation of the hadîths**

*Faqihuddin Abdul Kodir*

**H**adîth are usually defined as actions in the form of words, deeds, or manifestations of approval that can be traced back to the Prophet Muhammad. They are narratives that originate from the Prophet. Other terms used to refer to *Hadîth* include *sunnah*, *khavar* and *atsar*. The term *sunnah* is most common, which is why *Hadîth* are sometimes also known as the *sunnah* of the Prophet. The literally meaning of *sunnah* is 'way', or 'road', and it is therefore often translated as 'tradition' in the sense of a course of action commonly followed by the Prophet. *Khavar* literally means 'news', and *atsar* means 'heritage'. *Hadîth* itself means 'something that is new', or 'something that is reported', but it has come to be the term used to refer to something reported from or about the Prophet: one of his utterances, one of his actions, or one of his decisions.

In the hierarchy of sources that are used as the basis for rulings under Islamic law (*istinbâth*), the *Hadîth* texts rank second after the Quran. This is because, according to Islamic legal theory (*usûl fiqh*), Islamic law is the law of Allah and therefore must be based on God's revelations and words. The Quran is the first source of Islamic law because it contains His direct, primary, and certain revelations. The *Hadîth* serve as a clarification of the revelations contained in the Quran. Insofar as *Hadîth* are also regarded as revelation they are indirect and secondary and their accuracy is not necessarily guaranteed. The accuracy of the Quran as the very word of God as revealed to Muhammad, by contrast, is unquestionable. The accuracy of the text of the Quran is guaranteed because the chain of transmission of the text from the time of its revelation to Muhammad to its being written down in definitive form included a large number of transmitters in each generation. There is less certainty that *Hadîth* texts contain accurate reports of the Prophet's actual words and actions simply because the number of individuals in each generation who orally relayed those reports from one person to the next is smaller. In most cases the number of transmitters in each generation was only one or two. With fewer links between the Prophet's words and the permanent

written record there is a greater possibility of a mistake, an omission, or an outright lie.<sup>1</sup> For that reason, the authenticity of the Hadîth as a source for Islamic legal doctrine is considered less certain than the Quran.

In his analysis of the sources of Islamic law, the ninth century scholar Imam Shâfi'i<sup>2</sup> categorized the Hadîth as 'individual reports' (*al-khabar al-khâsh*) in the sense that they were heard and reported by a limited number of individuals, sometimes only one. This differs from the Quran, which Shâfi'i termed a 'general' or 'public report' (*al-khabar al-'âmm*) because it was heard, witnessed, and transmitted publicly and therefore accepted by- and acceptable for all Muslims. The fact that knowledge of the Prophet's actions was much more limited than knowledge of the contents of the Quran makes it more difficult to apply the terms of the Hadîth to all Muslims. The authenticity of the Hadîth is "strongly presumed" (*zanniy*) rather than axiomatic [*al-'ilm al-darûriy*]. It is for that reason that Shâfi'i said, "We are not justified in demanding repentance of one who is doubtful as to the truth of a Hadîth".<sup>3</sup>

The fact that the Hadîth rank below the Quran in the hierarchy of sources means, of course, that the authority (*hujjiyah*) of the Hadîth is less than the authority of the Quran. However, the Hadîth are more authoritative than either *Ijmâ'* —the consensus of the *ulamâ'* —or *Qiyâs* —analogy. The authority of the Hadîth as evidence of God's will derives from the fact that the Prophet Muhammad possessed a special understanding regarding the meaning of the Quran. The Prophet is the medium through which God revealed the Quran. For that reason, the words of the Prophet as contained in the Hadîth have particular significance as explanation (*bayân*) and elaboration (*tafsîl*) of the meaning of God's revelation.

The Hadîth serve a number of different functions in relation to the Quran. Hadîth sometimes function as confirmation (*ta'kid*) of the revelation contained in the Quran, sometimes they supply an interpretation (*tafsîr*) of the Quran, and sometimes they are affirmative (*ityân bi al-jadîd*) in that they adduce new matters not mentioned in the divine revelation but in accordance with its basic spirit. In this regard, Imam Shâfi'i stated that the Hadîth, like the Quran itself, constitutes 'wisdom' (*al-hikmah*) ordained by God to be delivered to humankind.' (QS. Al-Baqarah, 2:129). Imam Shâfi'i also stated that acceptance of the authority of the Hadîth is an aspect of the obligation to rely on Allah, since Allah commanded us to rely on the Prophet. Acceptance of the Hadîth and putting them into practice is a manifestation of faith and devotion to the Prophet.

The individual [*ahâd*] character of the transmission of the Hadîth is not an obstacle to its authority as a source of Islamic law. According to Imam Shâfi'i, even though a Hadîth is the report of a single individual it can still be accepted and put into practice,

<sup>1</sup> « ... ihtimâl al-khata' wa al-nisyân wa al-kidhb... ».

<sup>2</sup> a.k.a. Muhammad bin Idris al-Shâfi'i; 150-204H (H meaning Hijrah).

<sup>3</sup> "... Man shakka fîhi lam naqul lahû tubb..."; In: Muhammad bin Idris al-Shâfi'i, *ar-Risâlah* (1999); p. 235, no.1261.

just as the testimony of a single witness is sufficient in a court of law or we rely on information from a single individual in daily life. However Imam Shâfi'i has also said that:

“... If anyone can say that there is a consensus (*ijmâ*) by the religious scholars (*'ulamâ*) confirming the authority of *Hadîth*, it should be me. But that is not the case, I only say that as far as I know the legal experts (*'ulamâ fiqh*) do not disagree [i.e., there is no *ijmâ*] that *Hadîth* are a source for Islamic law...”<sup>4</sup>

In short, the authority of *Hadîth* is accepted by most, but not by all, *'ulamâ*. The Quran, on the other hand, has the universal acceptance of all *'ulamâ*. For that reason the authority of *Hadîth* only extends to matters of religious practice, not to matters of faith and creed. This was stated by the 13<sup>th</sup> century Islamic scholars Ibn al-Salâh (577-643H), al-Nawawîy (631-676H), the 16<sup>th</sup> century scholar al-Suyûtiy (849-911H) and other *Hadîth* experts.<sup>5</sup> Religious practices include rules regarding prayer, fasting, alms, the pilgrimage, as well as rules regarding civil society, including family relations, neighbourhood relations, and social-, economic- and political life. This is distinct from matters of faith, which include knowledge of the attributes of Allah, the angels, our understanding of Judgement Day, heaven and hell.

### Classifying *Hadîth*:

#### ***Sanad* (transmission) and *matn* (message) criticism**

Initially, *Hadîth* were simply accounts of the Prophet's words and/or actions. The companions of the Prophet heard and observed the Prophet and put his example into practice. In cases of uncertainty or ambiguity as to the significance of the Prophet's actions the companions could simply ask the Prophet for direction or clarification. The Prophet's response could take the form of clarification, suggestions, or even criticism. At that time, therefore, the *Hadîth* consisted solely of what are called *matn* ('matter'; 'topic'), the message embodied in the Prophet's words or actions. After the Prophet's death, the *Hadîth* came to be composed of two parts: there is the account of the action itself, based on what the Prophet said or did, i.e. the *matn*, and also the *sanad*, or the chain of names of those who were responsible for the process of hearing and subsequently transmitting the original messages from the Prophet. The further removed (in time) from the Prophet the longer the *sanad* of a *Hadîth* and the larger the number of transmitters. As a result, evaluation of the authenticity of *Hadîth* became more difficult, painstaking, meticulous, and cautious. There follows an example of a *Hadîth* with both *sanad* and *matn*. The *sanad* is underlined; the *matn* is in bold:

*It has come to us on the authority of Abu Kurayb, on the authority of Abdah bin Sulaiman,*

<sup>4</sup> Ibid, topics no. 1249-1250.

<sup>5</sup> In: Ahmad Umar Hisham, ed. (1989): Jalaluddin Abdurrahman al-Suyuthi, *Tadrîb al-Râwi fi Sharh Taqrîb al-Nawawî* (Beirut, Dar al-Kitab al-'Arabi, I, p.54).

on the authority of Muhammad bin 'Amr, on the authority of Abu Salamah, on the authority of Abu Hurairah that the Prophet has decreed: "The best you can ever do is to treat your wife as well as you can". Narrative by Imam al-Tumudhi.<sup>6</sup>

Since the death of the Prophet every *Hadîth* includes both a *sanad* setting forth the chain of transmission and a *matn* containing the essential message. The *matn* of the *Hadîth* depends on the *sanad*, and the *sanad* and *matn* are therefore of equal importance. As stated in the science of *Hadîth*, the *sanad* is imperative to religion since the truth of the message contained in the *matn* depends on the validity of the *sanad*. Were it not for the *sanad*, any report or hearsay could be passed off as originating from the Prophet.

The study of *Hadîth* involves the study of both *sanad* and *matn*. Without an evaluation of both the *sanad* and the *matn* a *Hadîth* cannot be considered as the basis for a legal ruling. The study of *sanad* is known as '*ilm riwâyat wa dirayat al-hadîts*' or the science of narration, transmission, and dissemination of *Hadîth*. The study of *matn* is known as '*ilm fiqh al-hadîts*' or the science of comprehension, analysis, examination and implementation of *Hadîth*. As a result the categorization of *Hadîth* as *sahîh* [valid], *hasan* [sound], or *da'îf* [weak] is based not only the reliability of the *sanad* but also on the *matn*. A *Hadîth* is not considered to be valid or legal, nor can it be implemented, until both its *sanad* and *matn* have been subjected to critical evaluation. The critique of the *sanad* and *matn* are inseparable in the narration and implementation of *Hadîth*. This critical methodology has been employed by *Hadîth* scholars from the early period of Islam, but while the *Hadîth* scholars typically concentrate on analysis of the *sanad*, the '*ulamâ fiqh* (Islamic legal experts) focus more often on the *matn*.

Critique of the *sanad* means investigation and approval of the individuals named in the chain of transmission who bear responsibility for a *Hadîth* narrative, from the last person in the chain who recorded the *Hadîth* to the first person who had direct contact with the Prophet. Every narrator in the chain of transmission is subjected to critical evaluation and investigation ('*ilm al-jarh wa al-ta'dîl*). The investigation focuses on the integrity (*thiqah*) of each narrator in every generation that transmitted the *Hadîth*. If one of the narrators in one generation is deemed to lack sufficient integrity, the *Hadîth* cannot be accepted.

In the evaluation and approval of *sanad* the links in the chain of transmission must all be directly connected (*ittisâl*). Each narrator must have heard the *Hadîth* report directly from his teacher, i.e., the previous narrator in the chain of transmission. Each narrator must also meet a standard of integrity measured by his devotion (*thiqah*), and his honesty ('*adâlah*), his ability to remember (*dabt*).<sup>7</sup> Imam Shâfi'i added the requirement that the transmitters of the *Hadîth* must comprehend its meaning.<sup>8</sup> These requirements

<sup>6</sup> Muhammad bin Isa Al-Turmudhi, *Sunan al-Turmudhi* (ND): III/466, no. Hadîth: 1162.

<sup>7</sup> Al-Suyûthi, *Op.Cit.*, I:43-44.

<sup>8</sup> Al-Shâfi'i, *Op. Cit.*, p.201 no.1040.

are the criteria used for the evaluation of *sanad*. A *sanad* is considered valid when the criteria of continuity are satisfied, when all the links in the chain are connected, and when the integrity of each individual narrator in every generation is demonstrated. If this is not the case, the *Hadîth* will be considered weak (*da'îf*), even if the deficiency relates to only one of the criteria in one generation of transmitters.

*Hadîth* scholars have developed several rubrics for the types of weaknesses that occur in *sanad*. These include: the presence of a narrator who is not known by *Hadîth* scholars (*majhûl*); the existence of a narrator the scholars have not approved (*matrûk*); who is considered corrupt (*majrûh*); who is not recognized (*lâ yu'raf*); or whose *Hadîth* are known to be invalid (*lâ yasihhu hadîthuhû*); a break in the chain of transmission (*lâ yasihhu isnâduhu*); the presence of a narrator who is not well acquainted with the text (*laysa bi al-qawîyy*); or has limited integrity (*laysa bithiqah*); the chain of transmission is discontinuous (*munqathi'*); or is weak (*layyin*). When the *sanad* of a *Hadîth* is deemed to suffer from one of these flaws, according to the *Hadîth* scholars, the *Hadîth* is weak and cannot be used as a legal reference. These same criteria are also used to categorize *Hadîth* from the point of view of the strength of the *sanad*.

The text written by Shaykh Nawawi of Banten entitled "*Uqûd al-Lujayn*", which is commonly used as a reference on issues concerning the relationship between husbands and wives in Islam, contains many *Hadîth* with a weak (*da'îf*), an unacceptable (*mardûd*), and even false (*mawdû'*) *sanad*. Other *Hadîth* in Shaykh Nawawi's text are considered flawless (*shahîh*) and sound (*hasan*).

An example of a weak *Hadîth* is one in which it is reported that the Prophet stated,

"... Women are a snare set by the devil (to lead mankind astray). If it were not for men's lust it would not be impossible for women to dominate [or obtain a place in the eyes of] men..."

Another *Hadîth* contained in Shaykh Nawawi's text reads,

"... Youth is a form of madness, and women are the devil's snare..."

These *Hadîth* are weak, according to Al-Sakhâwi in his "*al-Maqâshid*", so that they cannot be approved or serve as the basis for legal practice or thought.

Then there is the following *Hadîth*:

"...The birds in the sky, the fish in the sea, and the angels in heaven all make entreaty to Allah on behalf of a woman who is obedient to her husband, for as long as she has her husband's approval..."

This *Hadîth* is included in Nawawi's "*Uqûd al-Lujayn*", in Al-Dhahabi's "*al-Kabâ'ir*" and in Al-Haitami's "*Al-Zawajir*", but none of these texts provide a *sanad* for the *Hadîth*. A *Hadîth* without a proper *sanad* cannot be sustained (*lâ ashla lahû*).

The accuracy of a *sanad* is an absolute requirement, but it is nevertheless just

one of two conditions for a *Hadîth* to be accepted. The other necessary condition is the accuracy of its *matn*. Generally speaking the '*ulamâ Hadîth* agree that the validity of a *sanad* does not inevitably indicate that its *matn* is valid, and vice versa. As stated by the fifteenth century scholar Ibn Qayyim al-Jawzi (d. 751H): "It is understood that the validity of a *sanad* is one condition for the validity of a *Hadîth*, but it does not automatically guarantee that the *Hadîth* is valid".<sup>9</sup>

When the *sanad* of a *Hadîth* is found to be valid it means that the *sanad* satisfies the rigorous standards of critical *sanad* analysis. But this does not fully guarantee the truth of the message (*matn*) it contains. According to the teaching of al-Suyûti, "when we say that a *Hadîth* is valid, this means that it is linked to the source and in accordance with other requirements, and we accept it because it is methodologically acceptable. But it does not mean that it can be said to be definitely true and acceptable, because there remains the possibility of mistakes and omissions on the part of a narrator of integrity".<sup>10</sup> Indeed, Abu al-Layth stated categorically that "all '*ulamâ Hadîth* agree that a valid or sound *sanad* does not guarantee the validity or soundness of its *matn*, and vice versa".<sup>11</sup>

The approval of a *Hadîth* is based not only on a critique of its *sanad* but also of its *matn*. *Hadîth* that are acceptable from the perspective of their *sanad* can still be found to be invalid or weak from the perspective of its *matn*. Within the science of *Hadîth* the critical analysis of the *matn* has two components. The first component involves an evaluation of whether the *matn* contains inconsistencies and discrepancies (*shudhûdh*). Secondly, there must be an evaluation of possible confusion (*'illah*) with respect to the meaning of the *matn*. Inconsistency and confusion of the *matn* are indications of the weakness of a *Hadîth*. When a *Hadîth* is inconsistent and/or confusing it means that it is weak (*da'îf*) and unacceptable as a legal reference. From the beginning *Hadîth* scholars have conscientiously evaluated the *matn* of *Hadîth* for possible inconsistencies and confusion. But this analysis was further developed by Islamic legal scholars (*'ulamâ fiqh*) and theologians (*kalâm*). They have a greater interest in the correct implementation of the *Hadîth*, particularly when they touch on the other foundations of the law, such as those from the Quran, the *ijmâ'* (the consensus of the '*ulamâ*), the *qiyâs* (analogical reasoning), experience, etc.

A *Hadîth* is considered inconsistent (*shâadh*) when the text differs from a text related by another narrator with greater integrity, or when the text is inconsistent with another *Hadîth* that is related by narrators with the same level of integrity but there are larger numbers of narrators. There are several types of inconsistencies in *matn*: they can take the form of additions to the text (*ziyâdah*), an inversion (*qalb*), a manifest discrepancy (*idtirâb*), a writing error (*tashîf*), and the inclusion of a narrator's interpretation in the

<sup>9</sup> "...Qad 'ulima anna shihhat al-isnâd sharthun min shurûth shihhat al-hadîths, wa laysat mûjibatun li shihhat al-hadîths..."; Al-Damini (1984): 248.

<sup>10</sup> Al-Suyuthi, I/54.

<sup>11</sup> Al-Khair Abadi, *al-Manhaj al-'Ilmi 'ind al-Muhadditsîn fi al-Ta'âmul ma'a Mutûn al-Sunnah* (1998):14.

text of the *Hadîth* (*idrâj*).

An example of an inconsistency involving an addition to the text is a *Hadîth*, narrated by Shu'bah, that the Prophet was once asked:

"... 'What act does Allah love above all else?' The Prophet answered, 'Performance of prayers at the proper time'..."

The students of Shu'bah related this *Hadîth* with the phrase "at the proper time." But one student, 'Ali bin Hafsh, related the same *Hadîth* stating "at the beginning of the proper time." In the second version there is added the phrase "the beginning of" that does not appear in the first. Additionally, the narrator of the first text without the phrase "the beginning of" was an individual of much greater integrity than the narrator of the second *Hadîth*, and the number of narrators was larger. For that reason, Imam Bukhari opted for the first version of the *Hadîth* rather than the second version, as did Imam al-Dâruqthni.<sup>12</sup> And Imam al-Nawawi (631-676H) decided that the second version of the *Hadîth* (prayer at the beginning of the proper time for prayer) is weak and was therefore not acceptable.<sup>13</sup>

An example of an inconsistency caused by a writing error (*tashîf*) is the *Hadîth* on the wife's duty of complete submission to her husband's physical needs. In the narrative by al-Tirmudhi (200-279H) it is reported that the Prophet said:

"... When a husband wishes his wife to have intimate relations with him she should comply, even though she is in the kitchen cooking...." In another narrative it is stated: "...even though she is seated on a camel..."<sup>14</sup>

But in the narrative of Imam Ahmad bin Hanbal the text reads:

"...When you wish to fulfil your physical needs with your wife, go to her, even though she is in the kitchen..."<sup>15</sup>

Here there is a difference in wording resulting from a writing error [*tashîf*]; in al-Tirmudhi's narrative the phrase *fal ta'tihî* is used indicating an instruction to the wife to fulfil her husband's physical needs. But in Ahmad's narrative *fal ya'tihâ* is used, indicating a directive addressed to the husband to satisfy his physical needs only with his wife, not with another woman, even though his wife is in the kitchen at the time. The difference in the wording seems minor, but it results in a dramatic difference in meaning between the first version of the *Hadîth* and second. From the first *Hadîth* it can be understood that a wife should fulfil her husband's physical needs, whenever and wherever. A wife has no right to refuse. Indeed, if she does refuse she will be cursed by the angels and all living things. But the understanding of the second version is that the

<sup>12</sup> In : Ahmad bin Ali bin Hajar Al-'Asqallâni, *Fath al-Bâri* (1993): II /190-192.

<sup>13</sup> Abu Zakariya Muhy al-Dîn Yahya bin Sharaf al-Nawawi, *al-Majmû' Sharh al-Muhadhdhab*(1984): III/52.

<sup>14</sup> "...idha ar-rajulu da'â zawjatahu lihâjatihî, fal ta'tihî walau kânat 'ala al-tannûr, wa fi riwayatin walau kânat 'alâ zhahri qatabin..."; In: Al-Tirmudhi (1992)/V, Hadîth no. 4697.

<sup>15</sup> "...Idha arâda ahadukum min imra'atihî hâjatan, fal ya'tihâ, walau kânat 'ala al-tannûr..."; In: Ahmad bin Muhammad Ibn Hanbal, *al-Musnad* (ND): IV/23.

husband is advised to satisfy his physical needs with his wife only, and not with other women, even though his wife is in the kitchen. The second version indicates merely that a man is permitted to satisfy his needs with his wife though she is occupied with another matter, and does not denote a requirement of complete submission on the part of the wife to the physical needs of her husband.

The difference in meaning is a result of a reading/writing error (*tashîf*); one narrator read or wrote *fal ta'tihî* [the wife should satisfy the needs of her husband], while the other narrator read or wrote *fal ya'tihâ* [the husband should come to his wife to satisfy his needs]. As a result of this error the *Hadîth* is too weak to be used as a legal reference until there is certainty that one version is stronger than the other. Because of this inconsistency, the view adopted within classical *fiqh* is that a wife's submission to her husband's physical needs carries conditions. These conditions include that the wife is not engaged in more important tasks at the time, and that intimate relations will not cause her harm, either physical or mental.<sup>16</sup>

The second type of critique applied to *matn* is an evaluation of possible confusion (*'illah*) in the meaning of the text. Confusion weakens a *Hadîth*. In his work '*al-Mawdhû'ât al-Kubrâ*', Ibn al-Jawzi (d. 597H) mentions seven forms of confusion that occur in *matn*. These include: 1) inconsistency with a verse (*âyat*) of the Qur'ân; 2) with another more valid *Hadîth*; 3) with historical fact; 4) with rationality; 5) with sense experience; 6) association of either great reward or great sin with an insignificant act; or 7) inappropriate linguistic formulation. In his work '*al-Manâr al-Munîf fi al-Sahih wa al-Da'îf*', Ibn al-Qayyim al-Jawzi (d. 751H) used these seven factors to classify *Hadîth*.<sup>17</sup>

The critique of the *sanad* and *matn* of reports that were related as *Hadîth* has been recognized and practiced since the time of the companions of the Prophet. The companions entered into debates over whether the validity and truth of accounts communicated among themselves should be confirmed. Some companions readily accepted accounts that came from other companions. Another group demanded verification in the form of the testimony of another person or an oath in support of the transmission. Some companions rejected *hadîth* related by their fellow companions because they were deemed not credible, considered to violate the demands of the Quran, or because they were inconsistent with reason or historical fact.

At one point Aishah became very angry when she heard that Abu Hurairah had related a *Hadîth* according to which the Prophet stated:

"...The sources of misfortune are three: horses, women, and houses..."<sup>18</sup>

For Aishah the Prophet could not possibly have made such a statement since it was inconsistent with the most fundamental principles of the faith—that Islam recognizes

<sup>16</sup> Wahbah Al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu* (1989): IX/6851.

<sup>17</sup> *Id.*: al-Khair Abadi, pp. 22-26.

<sup>18</sup> The accepted *Hadîth* was narrated by Bukhari. *Id.*: al-'Asqallani, VI/150-152.

neither sources of misfortune nor sources of profit, since all things come from God. Aishah read the following verse from the Quran:

“No misfortune can happen on earth or in your souls but is recorded in a decree before We bring it into existence: that is truly easy for Allah”. (QS. Al-Hadid, 57: 22).

Another *Hadîth* rejected by Aishah is the *Hadîth* stating:

“...a child born out of wedlock is as bad as its parents...” (Al-Hâkim, IV/100),

Aishah rejected this *Hadîth* on the grounds that it contradicts the fifteenth verse of the *surat al-Isra*, which states that an individual will not be burdened with sins committed by another (*wa lâ taziru wâziratun wizrâ ukhrâ*). Ibn ‘Abbas also rejected this *Hadîth* on the grounds that it contradicts the rationality of Islamic law. He commented that, “If an illegitimate child is bad than it should not be permitted to live but should be punished along with its two parents”.

Similarly, Umar bin Khattab once rejected a *Hadîth* which he thought contradicted the teaching of the Quran. He refused to accept a decision of the Prophet, narrated by Fathimah bint Qays, one of the companions, stating that a woman who has been divorced for a third time does not have a right to receive support in the form of food and a place to stay from her former husband. In response to the *Hadîth*, Umar stated, “We will not abandon the stipulations of Allah and his Prophet on the basis of the narrative of a woman who may be mistaken or have a faulty recollection. Allah has stated:

“O Prophet! When ye 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.....”. (QS. Al-Talâq, 65:1).<sup>19</sup>

The method of comparing *Hadîth* reports with texts from the Quran was developed most extensively by scholars from the Hanafi madhhab (school of legal thought)—one of the four schools of Islamic legal thought. For them, Quranic texts that have a broad meaning (*âmm*) cannot be narrowed by a *Hadîth*.<sup>20</sup> For example the statement in the Quran that any Quranic verse may be recited in prayer (QS. Al-Muzammil, 72: 20) must be understood to have a broad object, so that the recitation of any verse or surat during prayer qualifies as obedience to the Quranic command. The *Hadîth* stating that the recitation during prayer should be the *sûrah al-Fâtiḥah* cannot restrict the meaning of the Quranic verse, which has always been broad. For adherents of the Hanafi school, therefore, *sûrah al-Fâtiḥah* may be recited during prayer, but *al-Fâtiḥah* is not the only text that may be used—other verses or surat may be recited instead.<sup>21</sup>

This same type of comparison was undertaken by Ibn Hazm (384-456H). He determined that a *Hadîth* included by Imam Muslim in his *Sahîh* is not simply weak but is false (*mawdhû*). It concerned a *Hadîth* related by Ibn ‘Abbas, who said,

<sup>19</sup> For the text of the *Hadîth* see: Ibn al-atîr, *Jâmi’ al-Ushûl min Ahâdîts al-Rasûl*, (1983): IX/ 87, *Hadîth* no. 5967.

<sup>20</sup> “*âmm al-Qur’ân lâ yukhashshah bi al-khabar al-wâhid*”.

<sup>21</sup> See: al-Jash-shâsh (1347H): I/19.

“...At first the Muslims disparaged the standing of Abu Sufyan and did not want to sit next to him. Then he visited the Prophet and said, ‘O Prophet, three things I wish to give you, will you accept?’. ‘Yes’, said the Prophet. Abu Sufyan said: ‘I have the best and most beautiful Arab woman, Umm Habibah, I will marry her to you.’ ‘I accept’, answered the Prophet...”.

The *sanad* of this *Hadîth* is valid, and Imam Muslim categorized it as such. But Ibn Hazim said that it conflicts with historical fact, since Abu Sufyan did not convert to Islam until after the city of Mecca had been brought under Muslim control, whereas the Prophet married Umm Habibah two years before Mecca was taken, during the period he was in Ethiopia. For that reason Ibn ‘Abbas stated that the *Hadîth* is false, certainly false.<sup>22</sup>

The comparison of a *matn* with historical fact and with other *Hadîth* is a method for critical evaluation of *Hadîth* used by many ‘*ulamâ*. Shaykh Muhammad al-Ghazâli (1917-1996M) used this technique to critically assess a valid *Hadîth* to the effect that it is preferable for women to perform their prayers in a secluded place.

“... It is related by the wife of Abi Hami al-Sâ’idi’s that she once appeared before the Prophet and said: ‘O Prophet, I take great pleasure in praying with you’. But the Prophet answered: ‘I know that you are fond of praying together with me. But it is better that you perform your prayers in your bedroom than in your sitting room. It is better to perform your prayers in your sitting room than in your house. It is better to perform your prayers in your house than in the neighbourhood mosque. It is better to perform your prayers in the neighbourhood mosque than in my mosque...’.”<sup>23</sup>

Shaykh al-Ghazâli sharply criticized this *Hadîth*. He deemed the *matn* of the *Hadîth* not to be in accord with historical fact as shown by other, more valid, *Hadîth*. These other *Hadîth* demonstrated that throughout the Prophet’s lifetime the Prophet’s wives and his female companions regularly joined in congregational prayers with the Prophet without ever being excluded or reprimanded. Indeed, a special entrance had been constructed for women to enter the Prophet’s mosque. On one occasion the Prophet heard a baby crying while he was leading congregational prayer. Upon hearing the baby cry, the Prophet quickly completed the prayers out of concern for the baby and its mother. Many women prayed at the mosque with the Prophet. These facts are sufficiently convincing that the *Hadîth* concerning ‘the preference for women to pray at home’ cannot be accepted.<sup>24</sup> An even more pointed indication of the falsity of the *Hadîth* is the fact that the Prophet issued a directive that women not be prevented from entering the mosque.<sup>25</sup>

The critique of the *sanad* and *matn* provides the basis for acceptance or rejection of a

<sup>22</sup> Al-Nawawi, *Sharh Muslim*, I/63.

<sup>23</sup> In: *Majma’ al-Zawâ’id* (1982): II/36.

<sup>24</sup> Al-Ghazali, *Al-Sunnah al-Nabawiyah* (1992): 62-64.

<sup>25</sup> Shahih Bukhari, *Hadîth* no.: 859; and Shahih Muslim, *Hadîth* no. 442

*Hadîth* text. In some cases the determination of acceptability (validity) or unacceptability (invalidity) involves a subjective judgment, and there are differences of opinion among the various *'ulamâ*. What is acceptable for one scholar is sometimes unacceptable for another. This is often encountered in compilations of *Hadîth*, particularly the law texts (*kutub al-fiqh*) of the schools of legal thought (*madhâhib*). For instance most scholars do not accept *Hadîth* that are related by a single narrator (*Hadîth ahâd*) as authority on matters of faith, but some find them acceptable. Most scholars do not accept *Hadîth* that are weak (*da'îf*), but some scholars prefer the use of even a weak *Hadîth* over the use of analogical reasoning (*qiyâs*). Imam Shâfi'i did not accept *Hadîth mursal*—*Hadîth* that do not identify a narrator from the generation of the companions of the Prophet—, but Imam Abu Hanifah found such *Hadîth* acceptable. Imam Malik bin Anas did not accept *Hadîth* that conflict with the traditions of the people of Medina (*'amal ahli Madinah*), but other scholars—Imam Shâfi'i, for example—accept such *Hadîth* and reject the custom of Medina if it contradicts the *Hadîth*.

Difference of opinion among scholars with respect to the acceptability of certain *Hadîth* is a reflection of the use of different methods to evaluate the *sanad* and *matn*. The fact that a particular scholar rejects one or several *Hadîth* is not an indication that the scholar rejects the authority of the example of the Prophet, but simply means that because of questions about the chain of transmission the scholar doubts the authenticity of *Hadîth* that other scholars accept. This is fundamentally a difference in the methodology used for evaluation of *sanad* and *matn*. The use of different approaches in the analysis of the authenticity of *Hadîth* is one of the reasons scholars hold differing views concerning the meaning of the *Hadîth* as a source of Islamic law.

## Understanding the Meaning of *Hadîth*:

### The Certainty of Diversity

The analysis of the *sanad* or *matn* of *Hadîth* is the starting point for the effort at understanding the *Hadîth* and putting them into practice. Through a critical reading of the *matn* scholars seek to arrive at a more precise appreciation of the meaning contained in the *Hadîth*. This then helps clarify the correlation between the *Hadîth* and other sources, such as verses of the Quran, other *Hadîth*, or historical fact. In addition, the text of a *Hadîth* consists of a sequence of meaningful letters, words, and sentences. In other words, a *Hadîth* text is also a linguistic text. As such, the meaning of the *Hadîth* is related to the structure, the character, and the vocabulary of the language in which it is expressed. Every language is a product of the culture it belongs to and functions against a cultural background. Arabic is no exception. The communication of ideas by means of linguistic symbols and the interpretation of those symbols by readers carries an inevitable risk of diverse, incompatible, and even reductionist and distorted understanding. As a result, diversity of interpretation is inescapable.

The point can be illustrated with a *Hadîth* that is used in *fiqh* texts on the question of the correct method of performing one's prayers (*tashahhud*). In Arabic the *Hadîth* reads "*faharraka isba'ahu*". Some scholars construe this language to mean 'move the index finger once, then fold it back into the hand'. Another group of scholars understands the language to mean 'raise the index finger in the direction of the *qiblah* (Mecca) holding it in that position until the recitation of the compulsory text (*tashahhud*) is completed'. A third group construes it as 'move the index finger up and down continuously', and yet another group understands it as 'move the index finger by turning it upwards, to the right, to the left and down, continuing this motion throughout the recitation of the compulsory text'.<sup>26</sup>

Thus the same words can generate several different meanings. It also happens that a *Hadîth* is reported using different wording but the different versions are understood to mean the same thing. As stated by Nuruddin 'Itr, the companions and a majority of the '*ulamâ* permitted the practice of using different wording in reporting a *Hadîth* provided that it conveys the same meaning.<sup>27</sup> For that reason some of the Prophet's companions, like Ibn Mas'ud, Anas and Abi al-Darda, concluded *Hadîth* reports with expressions such as "more or less in these words";<sup>28</sup> or "in other words, perhaps, but meaning this";<sup>29</sup> or "the Prophet stated in effect".<sup>30</sup> *Hadîth* texts that are phrased identically give rise to varied interpretations and understandings. The variety becomes even greater when the wording differs.

Diversity in the interpretation of the terms of *Hadîth* has existed as an ever-present possibility since the time of the Prophet. Indeed, the Prophet himself observed and acknowledged the diversity (*ikhtilâf al-ma'nâ*). That point is illustrated by an incident commonly cited by scholars of Islamic legal theory (*usûl fiqh*) when discussing the subject of interpretation during the period when the Prophet was still alive. As the companions were departing to return home after the battle of Azhab, the Prophet told them:

"...No one is allowed to perform the first evening prayers ('*asr*) unless you have reached the village of Bani Quraizhah...".<sup>31</sup>

Later, when the time for completion of the *asar*-prayer was nearly past and a group of the companions had not yet reached Bani Quraizhah, the companions fell into disagreement. Some insisted that they were not to perform the '*asar*-prayer along the way, and that the payer must be performed in Bani Quraizhah as commanded by the Prophet, even if that meant praying after the proper time had passed. Others in the group were of the

<sup>26</sup> *in*: al-Zuhaili (1996): 1/728-751.

<sup>27</sup> Nûr al-Dîn Itr, *Manhaj al-Naqd fi 'Ulûm al-Hadîths* (1985): 227-230.

<sup>28</sup> "aw shabîhu dhâ aw nahwa dhâ...".

<sup>29</sup> « ...allâhumma in lâ hakadhâ fa ka shakluhu... ».

<sup>30</sup> « ...aw kamâ qâla rasûlullâh... ».

<sup>31</sup> « ...lâ yushalliyanna aḥadun al-'ashra illâ fi banî quraizhah... ». *in*: Riwayat al-Bukhari, *Hadîth* no.946.

opinion that the Prophet had instructed them to pray in Bani Quraizhah in order to encourage them to travel swiftly, and that the *asar*-prayer should be performed at the proper time even if they had not yet reached the village.<sup>32</sup>

Thus, some of the companions interpreted the Prophet's words to mean exactly what he had said—that *'asr* should be performed in Bani Quraizhah. Others in the group interpreted the statement in terms of its purpose—that they should travel quickly—and not as an instruction to postpone the time for prayer. In other words, both textual and contextual approaches toward the interpretation of the language of *Hadîth* were present from the beginning and used by the companions of the Prophet.

These two different approaches toward interpretation of *Hadîth* texts—one literal and one contextual—is also evident among the scholars of the generation after the Prophet and the companions within the disciplines of law (*fiqh*), exegesis (*tafsîr*), and religious doctrine (*'aqîdah*). Within law, for example, *Hadîth* texts regarding *zakât mâl* (alms in the form of money) and *zakât fitrah* (alms distributed at the end of the fasting month) were interpreted in different ways by different scholars. Shâfi'i scholars interpreted a *Hadîth* regarding the obligation to give wheat and dates at the end of the fasting month as establishing a fixed and unvarying requirement; the *zakât fitrah* obligation must be satisfied with wheat and dates. Some Shâfi'i scholars adopted a slightly broader interpretation of the *Hadîth*, allowing payment with other staple foods besides those mentioned in the text. The Hanafi school, however, interpreted the *Hadîth* as imposing a more general obligation to fulfil the needs of the poor at the close of the fasting month. According to this interpretation, the form of the *zakat* is unimportant: it can be paid in wheat, dates or other staples having equal value provided the needs of the poor are satisfied. Indeed, the *zakât fitrah* can even take the form of cash equal to the value of wheat or dates, since the poor know best what their needs are, and cash can be used to supply those needs.

Similar differences in interpretive approach have been adopted with respect to the *Hadîth* stipulating the payment of *zakât fitrah* in the early morning (after sunrise but before the communal prayer) of the first day after the end of the fasting month. Some scholars regard this as a hard and fast rule. Others, however, understand the specific requirement contained in the text against the background of the social context in which it was first stated, where people lived simply, in small, close-knit communities, and had limited access to food. Outside of that particular context, the *zakât fitrah* can be paid with other foodstuffs, such as rice, corn, and sago, or with equivalent value in cash. The timing of the distribution can also be made earlier, including at the beginning of Ramadan, since the short time frame specified by the Prophet is no longer sufficient to collect and distribute *zakât fitrah*.

Once again, this illustrates that a particular *Hadîth* can be given a literal, textual

<sup>32</sup> In: al-'Asqallani, Op. Cit; III/109-110.

meaning or can be interpreted substantively according to its broader purpose. The use of a textual approach will generally have the effect of narrowing the scope of its application. To the extent such approaches are used, the saying that Islamic law can be received and implemented at all times and in all places is inapt and irrelevant. But calls to avoid such literal and simplistic interpretations of Hadîth are heard with increasing frequency. Shaykh al-Ghazali sharply criticized the tendency to use an overly literal approach to the interpretation of *Hadîth*. His student, Al-Qaradhawi, proposed eight basic guidelines (*ma'âlim wa dawâbit*) for arriving at a proper understanding of a *Hadîth* text: compare the text with verses from the Quran; compare with other *Hadîth* that have a similar theme; classify *Hadîth* that are contradictory; investigate of the causes, circumstances, and purpose of a *Hadîth*; differentiate between *Hadîth* that concern a particular as opposed to a general matter; between *Hadîth* that are material and metaphorical; between *Hadîth* that concern the supernatural and the natural world; and finally confirm using the literal wording of a *Hadîth*.<sup>33</sup>

These eight guidelines are a blueprint for a contextualized interpretation of the literal terms of *Hadîth*. The words of a *Hadîth* do not change; what changes is the conditions of social life within which the *Hadîth* is implemented. The literal terms of a *Hadîth* can be said to be '*sâlih likulli zamân wa makân*'—understood in accordance with their respective context. That is the reason why the '*ilmu asbâb wurud*—the inquiry into the cause or circumstances that prompted the *Hadîth*—has become so critical in *Hadîth* studies.

## Bringing the Meaning of *Hadîth* Back to Earth:

### The Urgency of Contextualization

*Hadîth* texts are historical records. They relate the life, the pronouncements, the advice, and the actions of the Prophet. As historical records *Hadîth* are intimately connected to the social dynamics of Arab society at the time of the Prophet. Borrowing an expression from thinkers advocating the 'Islamization of science', such as Taha Jabir al-'Ulwani and Abd al-Hamid Abu Sulayman, *Hadîth* do not transcend time and space (*lâ yata'âla âla al-zamân wa al-makân*). *Hadîth* emerge, live, and take meaning from their context.<sup>34</sup>

In light of the fundamentally contextual character of *Hadîth*, a number of scholars have adopted an understanding of *Hadîth* informed by the essential purpose of the text and the root problem that it addresses. The meaning inscribed in the literal language of the text is not regarded as definitive and need not be given effect in an absolute and unconditional manner. The literal meaning of the *Hadîth* is applicable only within the context in which it appeared. When the social context changes the essential purpose of the *Hadîth* must be emphasized, rather than its literal terms.

<sup>33</sup> Yusuf al-Qaradhawi, *Kaifa Nata'amalu ma'a al-Sunnah al-Nabawiyah; al-Ma'alim wa al-Dhawabith* (1999): 93-183.

<sup>34</sup> *Ibid.*, p.12.

Ibn Khaldun has illustrated this point with the *Hadîth* that states, "Leadership is in the hands of the Quraish." This *Hadîth* must be understood within the context of the time, when it was the Quraish who possessed the leadership capacity, strength, and effective political power. When the Quraish were no longer the exclusive source of these qualities leadership no longer belonged exclusively to them, even though the language of the *Hadîth* remained the same. Leadership belongs to those who possess the basic qualities that were once found only in the Quraish. In other words, the essential message of the *Hadîth* does not refer to the Quraish, but instead to the leadership qualities possessed by the Quraish.<sup>35</sup>

Shaykh Muhammad al-Ghazali has made the same point in connection with the *Hadîth* that states, "A people that turns over leadership to a woman will never be happy." According to al-Ghazali, this *Hadîth* must be understood in context, otherwise it does not accord with the reality that women have often achieved positions of leadership in the world. The *Hadîth* addresses a situation in which a Persian queen was in line to succeed to the throne in a period of dynastic transition. At the time, the social and political circumstances in Persia were chaotic; it had been defeated by the Romans and there was unrest everywhere. The times demanded a leader who was strong, disciplined, and had an understanding of the problems. The throne, however, was given over to a young woman, inexperienced and with little understanding of the realm's problems. In the *Hadîth* the Prophet was addressing these realities, and not delivering a legal ruling prohibiting women from holding positions of political leadership.<sup>36</sup>

*Hadîth* on several other prohibitions for women, such as the prohibition of cutting their hair, receiving a tattoo, wearing hair extensions, shaving their eyebrows, and so on, should also, according to Shaykh Muhammad bin 'Ashur (1879-1973), be understood in the context of Arab society at the time. Ibn 'Ashur states that these prohibitions were revealed at a time when such practices were associated with prostitutes who lacked self-respect. In other words, the prohibitions were not directed at the specific actions but rather at their root causes—behaviour that is destructive of respect and self-esteem. After all, cutting one's hair or lengthening it are simply ways to make oneself attractive, very much on the same level as wearing make-up or brushing one's teeth. If it is grooming that is prohibited then all forms of grooming must be forbidden of everyone. But Islam allows us, including women, to make ourselves more attractive provided it is not for the purpose of engaging in behaviour that lowers our self-respect.<sup>37</sup>

The point is that *Hadîth* must be interpreted within the framework of their social context. *Hadîth* texts regarding 'relations between men and women' are a portrait of a particular social-cultural reality as it concerns the issues involved in such relationships. These texts must be understood based on the logic of their historical role of furthering a

<sup>35</sup> Ibid., p.130.

<sup>36</sup> Shaykh Muhammad al-Ghazali, *Al-Sunnah al-Nabawiyay bayna Ahl al-Fiqh wa Ahl al-Hadîth* (1992): 55-58.

<sup>37</sup> In: al-Khair Abadi, Op. Cit., p. 44.

process of transformation in the direction of justice and the general welfare. As records of particular cases, they might seem to be supportive of a social reality characterized by gender bias. Some of these texts include language that in a literal sense places women in an inferior position. But these texts should be understood in their context and assimilated to the broader transformative spirit that characterizes the Quran and other *Hadîth*.

The ideals of justice and the welfare of the community are the foundational principles of Islam. The structure of Islamic law is built on that foundation.<sup>38</sup> Arriving at a correct interpretation of texts addressing 'the relations between men and women' is only possible when those texts are aligned with Islam's foundational principles. Interpretations that are contrary to those principles must be challenged and rectified

The Qur'ân emphasizes a number of aspects of the principle of justice as it relates to the relations between women and men. First, women and men are created from the same entity, *nafs* (QS. Al-Nisâ, 4:1), and for that reason they are of equal standing; what differentiates them is only the quality of their devotion (QS. Al-Hujurât, 49: 31).

Second, both women and men have the obligation to live good lives (*hayâtan thayyibab*) and to do good works (*'amalan shâlihan*; QS. Al-Nahl, 16: 97). In order to achieve this, men and women are expected to work together and cooperate closely with one another (QS. Al-Tawbah, 9: 71).

Third, women and men have the same right to be rewarded for their works (QS. Al-Ahzâb, 33: 35).

In interpreting the *Hadîth* that deal with the relation between the sexes these abstract, conceptual principles should be considered on a more practical and operational level. As it relates to marriage, for example, the implementation of the principle of justice includes, among other things, the consent of both parties to the marriage contract (*tarâdin*; QS. Al-Baqarah, 2: 232-233); assumption of responsibility (*al-amânah*; QS. Al-Nisa, 4: 48); a shared commitment to create a peaceful family life (*al-sakînah*) that is full of love (*al-mawaddah wa ar-rahmah*; QS. Al-Rum, 30: 21); treating each other with kindness (*mu'âsharah bil ma'rûf*; QS. Al-Nisa, 4: 19); consultation with each other on problems (*mushâwarah*; QS. Al-Baqarah, 2: 233; Ali 'Imran[3]:159; Al-Shûra, 42: 38); and sharing the tasks of daily life in order to avoid saddling one party with an unfair burden (*al-ghurm bil ghunm*).<sup>39</sup>

These principles should serve as our guide in reinterpreting *Hadîth* pertaining to the relations between men and women. Contemporary interpretations of many of these *Hadîth* continue to engender inequality and unfairness in the relationship between men and women. That inequality, moreover, violates the most fundamental principles of the

<sup>38</sup> Ibn al-Qayyim al-Jawziyyah, *l'Îâm al-Muwaqqi'în 'an Rabb al-'Alamîn*, ed. Muhy al-Din'Abd al-Hamid (N.D.)III:14.

<sup>39</sup> In: Ali Ahmad al-Nadawi, *al-Qawâ'id al-Fiqhiyyah; Mafhûmuha, Nash'atuhâ, Tathawwuruhâ, Dirâsat Mu'allafâtiha, Adillatuhâ, Muhimmatuhâ, Tathbîqatuhâ* (1994):343.

Quran and *Hadîth*. For that reason, a reinterpretation of all the *Hadîth* that address the relations between women and men is imperative in order to make the ideal of social justice embodied in Islam a practical reality. Take, for example, the *Hadîth* that prohibits women from going out by themselves. It states:

“...It is impermissible for a woman who believes in Allah and the day of judgment to go out without being accompanied by a close relative (*mahram*) within the distance that can be covered in a journey of three days and three nights...” (Hadîth of al-Bukhari and Muslim).<sup>40</sup>

This *Hadîth* should be understood as an effort to provide protection for vulnerable persons from the possibility of violence. At the time the *Hadîth* was given, the category of those in need of protection included women. For that reason, women had to be accompanied by a close family member when they travelled long distances. Family members typically have strong emotional attachments to each other and provide each other with safety and protection. The presence of a close relative or “mahram” (a male relative who is prohibited to a woman as a marriage partner) to protect against the possibility that something bad will happen to a woman when she is away from home.

This *Hadîth* is not a prohibition against the specific action of going out alone, but a commandment to provide women with protection when they do go out. Prohibiting women from going out would be at odds with the principle of justice and the equal opportunity of all persons to engage in the life’s pursuits, regardless of the person’s gender, race, or nationality. When the Prophet was told of a woman who wished to make the pilgrimage alone he did not forbid her. Instead of prohibiting the woman from undertaking the journey alone, the Prophet but reprimanded her husband, telling him to “go with and accompany your wife.” (Hadîth of al-Bukhari and Muslim).<sup>41</sup> With this statement the Prophet makes clear that the essence of the *Hadîth* is a concern with ensuring safety, and not a prohibition against leaving the home. If the objective of the *Hadîth* is one of guaranteeing personal safety, it stands to reason that all components of society would be under a common obligation to ensure the protection and security of the entire populace. It would be arbitrary and short-sighted if, in response to an act of violence against a woman, a prohibition were imposed against women leaving the home. Why not, based on the same concern, prohibit men from going out, which would also ensure that women are protected as they travel and engage in other activities?

In a modern, civilized society the social order no longer depends on self-help and communal solidarity, but on the existence of rational institutions and systems, including institutions of law enforcement. Ensuring the security and safety of the population is one of the functions of those social structures. Through its political and legal system the state is expected to provide safety and protection for its citizens, men, women and

<sup>40</sup> In: Ibn al-Atsir, Op. Cit., VI/17.

<sup>41</sup> In: Ibn al-Atsir VI/17.

children. It is the institutions of the state, not individual citizens, that are responsible for providing protection for the citizenry. Certainly, safety and security should not be achieved by prohibiting citizens from activities that are among the most basic of human rights.

Thus, a proper understanding and faithful implementation of the *Hadîth* requires that they be analyzed according to the exacting methods developed by the scholars of the past. First, the *sanad* of the *Hadîth* must be evaluated and the *Hadîth* classified as either valid or invalid. Next, the *matn* of the *Hadîth* must be critically examined in order to identify and assess any internal inconsistencies (*'illah*) or incoherence (*shudhûdh*). A *Hadîth* text that is internally inconsistent or unintelligible cannot form the basis for legal rulings. The contextualization of *Hadîth* texts is also necessary. Contextualization involves arriving at an interpretation that is informed by and integrated with the social ideals that comprise the fundamental conceptual principles of Islamic shari'ah. For as Ibn al-Qayyim al-Jawzi has pointed out, the foundation of Islamic shari'ah is its social ideals, including justice, welfare, mercy and wisdom for all without regard for gender, race, or nationality. From this perspective, all forms of inequality and injustice in the relations between men and women must be eradicated as not in keeping with the social ideals of Islam. The ideal of welfare for all, *rahmatn lil 'alamîn*. *Wallâhu a'lam*.

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*differences in time and place:  
the need for a re-interpretation of the hadîts*

reference - 5

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مَنْ عَمِلَ صَالِحًا مِنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيَاةً طَيِّبَةً وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ  
بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ ﴿٩٧﴾

*“... Whoever works righteousness, man or woman,  
and has faith, verily, to this person will We give a good life,  
pure, and we will bestow on them such a reward according  
to the best of their actions...”*

(QS. Al-Nahl, 16: 97)

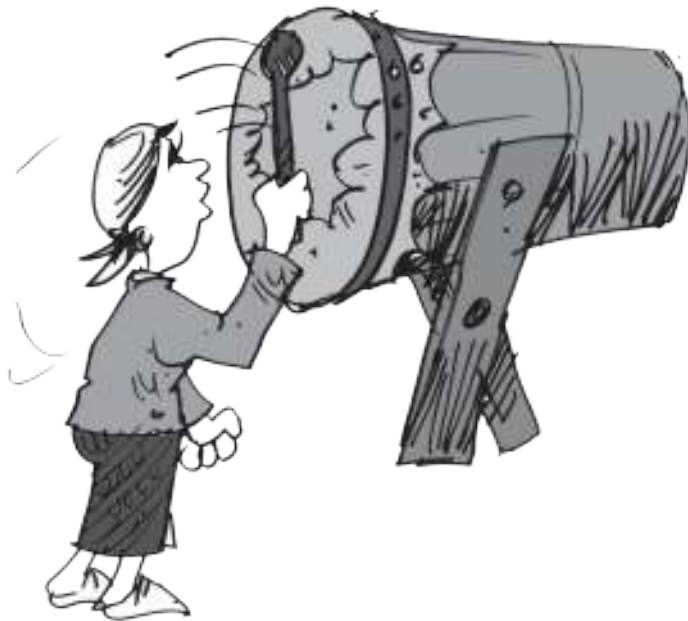
# The Socio-Historic Background of Early Islamic Society 6





**T**he material presented in this section describes the context in which the earliest Islamic teachings appeared. More specifically it presents some of the socio-cultural and political factors that touch upon the role and position of women, and some of the perceptions regulating women's lives in this early period.

The material tries to emphasize that the introduction of Islam and its teachings was, from its earliest beginnings, more than a collection of divine revelations handed down to the Prophet Mohammed; and that the whole process of Islam's further development and establishment throughout the world was characterized by confrontation, resistance, but also accommodation and adjustment in its contacts with other cultural traditions that were, at the time of contact, already well-established.





## OBJECTIVES

After studying the material presented here, the participants are able to...

- Understand about cultural ideology: how it functions, and how this took place in both pre-Islamic times, during the period of the Prophet's life, and in the next period (*khulafâ' râsyidîn*);
- understand the relation between gender and (political-/worldly-) power, both at the time of the Prophet and afterwards;
- understand the influences of culture, ideology, and Arab society on Islamic concepts that concern women;
- understand the involvement and active contribution of women at the time when the Prophet lived and in the period following that;
- understand the socio—cultural concepts from Islam that concern gender equality and justice.



## POINTS FOR DISCUSSION

- The dominant (Arab) ideology among the most powerful group at the time, the Quraisy, in the period before the introduction of Islam; during the Prophet's life; and in the period following his death (*khulafâ' râsyidîn*);
- The socio-cultural structures, particularly the relation between gender and (political-, worldly-) power at the time of the Prophet's life;
- The influence of culture and ideology on some of the concepts found in Islam that address women;
- The role and position of women during the time of the Prophet's life and in the period following that;
- Some of the concepts found in Islam that emphasize gender equality and justice.



## METHOD

Lecture and group discussion based on questions to- and answers from the speaker.



## TOOLS

Sticky cloth, markers, plain paper, cello tape.



## TIME

4 Hours.



## STEPS

### *First stage (1 hour):*

1. Divide the participants in 4 groups - if it is a mixed-gender group, separate them according to gender;
2. Each group takes one of the envelopes with illustrations that were prepared earlier. The illustrations are pictures of people wearing (traditional-) costumes from different regions, such as *galabiya* and *igal* (traditional outfit worn by Arab men); Indonesian *kebaya* (traditional long sleeved women's blouse) and a long scarf; traditional women's costume, *sarong* and *kebaya*, from the Minangkabau-region (Sumatra); traditional men's costume consisting of a *sarong*, *baju koko* (long sleeved, long shirt) and a black cap (*kopyah*); a *burka* as worn by the women in Afghanistan; a *salwar kamez*; a *sorban* (traditional head scarf); a contemporary Islamic Indonesian costume; a costume from Aceh (North Sumatra).
3. Ask the groups to discuss together the content of their envelop, trying to answer the question "Which of these costumes is Islamic, and why do you think so?". This takes approximately 20 minutes.
4. After this each group presents its findings to the participants of the other groups, and explains shortly their conclusions. A group discussion should develop, in which the facilitator emphasizes that the essential arguments presented by each group should focus on the mutually influencing elements from culture and cultural



traditions on the one hand, and religion or religious elements on the other.

*Second stage (1 hour):*

5. Based on the answers from the participants, the facilitator invites the speaker to present the lecture. It focuses on Middle Eastern socio-cultural conditions, and their influence on the formation of religion, specifically in relation to the role and position of women.
6. The speaker, presenting the lecture, organizes the material on the relation between Islam and culture along the following lines: rituals (including pilgrimage [*hajj*], praying [*salât*], fasting [*sawm*]); political system (including *shûrâ* [advisory council], men's leadership, nomadic wars, legal system); socio-cultural structures (including inheritance rules, marriage rules, strong misogynist attitudes); economic systems (including giving alms [*zakât*], *infâq*, buying/selling).
7. The speaker compares these general elements on a time scale, i.e. rules and habits from pre-Islamic times and at the time of the introduction of Islam. The essential point made here is that many systems developed from, or on top of previously existing traditions. The main difference being a thoroughly monotheist perspective and Islam's ideal of liberating mankind.



*Third stage (1 hour):*

8. The facilitator gives the participants the opportunity to ask questions about and discuss in greater depth the material from the lecture and the ideas brought forward in it, and to comment on it.

**Fourth stage (1 hour):**

9. After the discussion with the speaker, the facilitator asks the participants to formulate what conclusions can be drawn from the lecture and subsequent group discussion. While the participants try to focus their thoughts and knowledge, the facilitator writes down on a piece of plain paper which points are being brought forward by the group.
10. Next the participants and the facilitator try to find, as well as they can, the appropriate texts from the Koran and the *hadith* that address the points and conclusions that are brought forward by the participants. These texts will serve as the main material for the next section.



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**Notes for the facilitator (-s)/speaker:**

- ✓ *The content of the envelopes (illustrations) can be modified, adapted to the existing situation or local circumstances; as long as in essence the material focuses on this subject, i.e. to illustrate the relation between culture and religion.*
- ✓ *Discussing the content of the envelopes should not meander in the direction of textual arguments (naqliyyah), but remain focused on an exploration of the manifold and varied Islamic cultural expressions;*
- ✓ *The speaker or the facilitator could make a list of Islamic teachings and their origins, which might be from local Arabic traditions or from earlier times, including Jewish or Christian traditions, but explaining the differences and similarities between them (See the diagram further on in this section).*



**Diagram**  
**The influence of existing socio-cultural elements**  
**in pre-Islamic Arab traditions on Islam.**  
**(Khalil Abdul Karim diagram)**

Concept	Middle Eastern society and culture	Islamic teachings
<p>The glorification of the Ka’bah and the proscribed land i.e. Mecca</p>	<ul style="list-style-type: none"> <li>▪ Even though there are 21 different Ka’bah scattered over the Arab world, the various tribes agreed to honour only the one in Mecca.</li> <li>▪ The members of all tribes make an effort to make the pilgrimage to the Ka’bah in Mecca.</li> <li>▪ Many Jewish and Christian believers make the pilgrimage to the Ka’bah.</li> <li>▪ Honouring, praying, and making the pilgrimage to the Ka’bah is done in the footsteps of our arch father Ismael.</li> <li>▪ The other Arab tribes acknowledge and honour the Quraishi, the original inhabitants of Mecca, regarding them as keepers of the Holy Land (Ahlul Haram).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Islam has perpetuated the glorification of the Ka’bah and Mecca.</li> <li>▪ The Koran mentions Mecca as a safe and peaceful place, anyone who enters it will be safe (QS Al Imran [3]:97).</li> <li>▪ The Quraisy people are regarded as being the most prestigious group among all other groups in the Middle East.</li> <li>▪ The Prophet has decreed: ‘Leadership (should be) descended from the Quraisy’.</li> <li>▪ The Prophet has also decreed that other ethnic Arab groups are not of the same level as the Quraisy, while other non-Arab ethnic groups (Mawali) are not of the same level as the Arab people.</li> </ul>
<p>The pilgrimage</p>	<ul style="list-style-type: none"> <li>▪ Long before the establishment of Islam Arab people from all the different regions went on a pilgrimage, each year in the month of Dzulhijjah; this was compulsory.</li> <li>▪ During the pilgrimage the Arab people expressed talbiyyah, wore a special outfit (ihram), brought animals with them as offerings/sacrifice, they performed wukuf in Arafah, facing Muzdalifah, threw jumrah in Mina, ritually sacrificed the animals, performed thawaf (circum-ambulating the Ka’bah</li> </ul>	<ul style="list-style-type: none"> <li>▪ Islam continued the ritual of the pilgrimage, following most of the previously set ceremonies exactly, such as performing the thawaf, circum-ambulating the Ka’bah 7 times.</li> <li>▪ Islam regulated the pilgrimage more precisely, putting aside some of the elements that are considered syirik (taboo, in contradiction with Islam); this included for instance the prohibition of performing thawaf naked</li> </ul>

Concept	Middle Eastern society and culture	Islamic teachings
	<p>7 times), kissed the Ka'bah's holiest center piece, the hajar aswad, and held the ceremony, sa'i between the hills of Sofa and Marwah.</p> <ul style="list-style-type: none"> <li>▪ They regarded Dzulhijjah 8th as yaum attarwiyah.</li> <li>▪ Some of the pilgrims in those times performed the various rituals at Mecca naked, as a sign of their unlimited exaltation for the Ka'bah and its hajar aswad.</li> </ul>	<p>(without clothing).</p> <ul style="list-style-type: none"> <li>▪ Islam prohibited performing thawaf (circumambulating the Ka'bah) without clothing.</li> </ul>
General meetings on every Friday	<ul style="list-style-type: none"> <li>▪ Ka'ab bin Lu'ai was the first person to name this day Jum'at (Friday).</li> <li>▪ On this day the Arab people usually held a general meeting.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The habit of holding a meeting every Jum'at (Friday) was instituted by the Prophet during the hijrah, when he established a mosque in the middle of the oasis.</li> <li>▪ The Prophet would gather all of his followers to perform the Jum'at (Friday-) prayers and it was for the first time that he delivered a sermon (khutbah).</li> <li>▪ The Koran perpetuated the Jum'at (Friday) meetings: "...Hey you faithful, when you are called to perform your prayers on Friday, please be reminded quickly of Allah, and leave your buying and selling activities behind..." (QS. Al-Jumu'ah [62]: 9).</li> </ul>
Polygamy	<ul style="list-style-type: none"> <li>▪ Among the Arab people the practice of polygamy was customary and acceptable, with no limitations; they did not acknowledge a maximum number of wives either.</li> <li>▪ A husband was known as ba'al, while a wife was called mab'ul, as in: an object which can</li> </ul>	<ul style="list-style-type: none"> <li>▪ According to Islam the practice of polygamy is legitimate.</li> <li>▪ The Koran states: "...Then marry the (other) woman you like; two, three, or four..." (QS. An-Nisa [4]: 3).</li> <li>▪ The number of four, according to the religious</li> </ul>

Concept	Middle Eastern society and culture	Islamic teachings
	<p>be owned, dominated, cared for by the ba'al; the latter provides a livelihood and protects his mab'ul. A wife was also called 'haram', or 'prohibited'.</p>	<p>experts, is not absolute, but a consensus, agreed on by all Muslims, who decided that four was the maximum number of wives one could be married to.</p> <ul style="list-style-type: none"> <li>▪ A Muslim man is allowed to divorce his wife and to marry a (free) woman on the condition that at any one point he does not have more than 4 wives - apart from the number of woman slaves one could marry, such as the amat, jariyah, sariyyah or malak yamin, for whom there is no fixed limit.</li> </ul>
Differences between Arab and non-Arab people	<ul style="list-style-type: none"> <li>▪ The Arab people use the word a'jami for anyone who does not know or understand their language. The same word is also used to refer to women and animals.</li> </ul>	<ul style="list-style-type: none"> <li>▪ In one of the atsar it says "... Truthfully, all who are of non-Arab descent are not of the same level as the Arab people...".</li> </ul>
	<ul style="list-style-type: none"> <li>▪ The feeling of superiority of the Arab people regarding their race, and their elitism in ascribing a lesser value to other races is exemplified by the prohibition of marrying someone from another, non-Arab group (exogamy), even if this were a king.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Some of the educated Muslims still adhere to the discriminative viewpoints regarding the Arab and non-Arab people. Several books have been published in which the Arab people are praised and non-Arab people are vilified; among these is Ibnu Qutaibah's publication 'Tafdhil al-'Arab'.</li> </ul>
Family ties, family honour	<ul style="list-style-type: none"> <li>▪ In Arab cultures the people are very precise in establishing and caring for their family ties and lineage, mostly in order to provide support for each other in times of trouble.</li> </ul>	<ul style="list-style-type: none"> <li>▪ In Islam the elimination of one's lineage is placed on the same level as a criminal act, fit to be punished according to law, as defined in one of the Koran's paragraphs that was later abrogated, and which says: "...Don't you hate your fathers, because that is a heathen thing to do...". Or: "...Truly heathenish is to hate</li> </ul>

Concept	Middle Eastern society and culture	Islamic teachings
	<ul style="list-style-type: none"> <li>▪ It was seen as most insulting when called ‘ad-Da’iyu’, or ‘child of a different father’/someone whose family ties were not known. Ad-Da’iyu is regarded even worse than to be a crook, but who has an acknowledged lineage.</li> </ul>	<p>your fathers...”.</p> <ul style="list-style-type: none"> <li>▪ The Prophet has decreed: “...Anyone who claims a different descent than his or her father’s will not smell the fragrance of Heaven, and this fragrance will only be found after one walks for 70 years...”.</li> <li>▪ The Prophet has decreed: “...A son is property of the (male-) owner of a bed and adulterer ...”.</li> </ul>
Slavery	<ul style="list-style-type: none"> <li>▪ Slavery was an existing tradition in Arab society. Slaves were often individuals captured during one of the many wars waged in these times, or members of a tribe losing a war (prisoners of war); sometimes it was a result of poverty.</li> <li>▪ Slaves could buy themselves free, paying a sum of money as a form of compensation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Islamic law (syari’at Islam) recognizes the buying and selling of slaves. This system is in fact a logical consequence of the previously existing tradition of treating prisoners of war as slaves.</li> <li>▪ In Islam slavery is not prohibited, but acceptable; it was not declared illegal or otherwise considered unacceptable.</li> </ul>
Khilafah	<ul style="list-style-type: none"> <li>▪ Traditionally among the Arab tribes the leader was chosen from the elite, or someone who was influential and powerful (in society). He had to be one of the oldest among the tribe members, be brave and experienced, but also be one of the richest as well as a most understanding person. The election of a leader took place in the Tribe’s Council, whose members were also among the most influential men of the tribe, and the heads of the various families that were part of the tribe. The council members too had to be over 40 years old, and enjoyed complete freedom to speak their mind during the council meetings.</li> </ul>	<ul style="list-style-type: none"> <li>▪ At the time of the Prophet the council system was maintained. According to an-Najjar “... the Prophet never instructed Muslim society, which grew quickly and spread far over many regions in the Middle East and beyond to be governed in any specific way. The Prophet also never formulated any basic principles for an administrative system. Each separate group (kaum) regulated its own secular/profane matters.</li> <li>▪ Leadership elections were held after the Prophet had died, by holding discussions and deliberations that were presented in a</li> </ul>

Concept	Middle Eastern society and culture	Islamic teachings
		<p>council that consisted of representatives of the various Islamic groups, such as muhajirin and anshar. This continued until a communal decision was reached, electing Ali bin Abi Thalib.</p> <ul style="list-style-type: none"> <li>▪ The existing tradition experienced a profound change, since from this khalif (leader) onwards it was agreed that he could appoint his own successor, be it his son or another (male) relative.</li> <li>▪ The mechanism experienced yet another change after the khalifah (leadership) of Muawiyah, who seized the leadership from Ali, and who subsequently appointed his own son, Yazid, as his successor.</li> </ul>
<p>Syura: 'Tribal Advisory Council'.</p>	<ul style="list-style-type: none"> <li>▪ The tribal Advisory Council was an original Arab tradition which existed among the various groups (tribes) long before the development of Islam. It was the place where ideas were introduced and discussed among the local heads and/or leaders of the various tribes, and which could be taken to the overall Arab advisory body, the Arab Tribal Discussion Council.</li> <li>▪ Mala' were all the men over 40 years old, who were regarded as important men within the group, sometimes acting as bureaucrats and intellectuals. They were the ones to elect a new leader, yet with whom they would sit on the same level to discuss the problems and decide on important</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Syura ('council') in Islam was similar in character and aim as its pre-Islamic predecessor. Where the council included a certain group/tribe's elders, bureaucrats, and other leaders, in the period after the Prophet had died it consisted of representatives of the various Islamic groups, particularly Muhajirin and Anshar. However, after his meetings with the council the khalif would have additional sessions with a private advisor, his military commanders, and the palace's bureaucrats; these were subsequently known in Islamic law (fiqh) as the ahlul halli wal aqdi or ahlul ikhtiyar.</li> </ul>

Concept	Middle Eastern society and culture	Islamic teachings
	<p>matters together; these could be problems of war, political, economic, or social matters. Its opposite was known as qabil.</p> <ul style="list-style-type: none"> <li>▪ When the mala' would hold their council deliberations, they gathered in a building known as the Darun Nadwah. It was built by Qushai, the Prophet's grandfather.</li> </ul>	<ul style="list-style-type: none"> <li>▪ In the Koran this particular type of leadership and deliberation is described as "... Let their business be decided by discussion and deliberation among themselves..." (QS. Asy-Syura [42]: 38). And: "... Discuss your business with them and converse with them about it..." (QS. Ali Imran [3]: 159).</li> </ul>

# Muslim Women at the Beginning of Islam

Kyai Husein Muhammad

## *Introduction*

**M**ecca, the birthplace of Islam, lies in a vast expanse of desert. The Qur'ân names the original inhabitants of this area '(the) Arabs'. They were tough and on the one hand primitive tribes, but on the other they were also tenacious, persevering, and determined. This might be a result of the harsh natural conditions, for the desert is not a friendly place; the warm season lasts many months, and there is a lack of natural resources. The tribes-people lived in tents and made a living from animal husbandry, raising cattle, such as sheep, cows and camels in particular, while moving around, in search of pastures and grass land for their animals. The basic way of life for these nomadic tribes consisted of a strong, yet very undisciplined sense of tribal identity. Unlike for instance in urban culture, they did not abide by any strict or clear rules. Another characteristic closely related to this nomadic way of life was the almost constant state of conflict with other tribes, which was necessary just to survive in the harsh natural conditions with such limited resources. Violence and fighting things out seemed the best way to solve a problem, and there was little opportunity for adhering to other, more honourable ways of doing things. This being the case, the herds-people had a strong loyalty towards their respective tribes. They were only prepared to live closely together with the people of their own tribe.<sup>1</sup> In the Qur'ân we can find the following description:

*"... The tribes-people are non-believers and hypocrites and prefer not to know (about) the laws which they were given by God through His envoy..."* (QS. Al-Tawbah, 9: 97-98).

As a result of their difficult way of life, acute economic crises, and long periods of drought the tribes-people would often settle in towns or in more fertile areas. This was a process still going on long after the establishment of the Islamic realms in several regions. They would often move to cities like Mecca, Thaif, and Yatsrib (Medina) in search of a better way of life. But they would take with them their particular ways of life and their traditions and cultures would influence their new environment. From this

<sup>1</sup> Abduurahman Ibn Khaldun, *Muqaddimah*; transl. A. Thoha; Jakarta (2001):141-185.

we can understand that the citizens of Mecca actually consisted of an urban and a tribal society. Particularly the nomadic migrants in the city retained strong loyalties towards their original tribes, as mentioned before.

The Prophet Muhammad PBUH was born as one of Mecca's citizens in a relatively well developed part of the city. The term 'city' here refers to a fairly stable way of life, and the dynamics of a more heterogeneous society. This was also a result of Mecca's position along the busy trading route connecting the northern parts of the Arabian Peninsula and its southern regions. Networks of trade linked the Mediterranean with the Persian Gulf, the Red Sea and Jeddah, and even further on, towards Africa.

### *Religion*

Because of this strategic position Mecca was not only an important trading center, but also a centre of religion. Here was the Ka'abah, an important holy place. According to tradition it was first built by Abraham and his son Ismael. Abraham was known as the first of a long line of prophets. He taught a monotheist form of religion, which had its followers among most of the inhabitants of the whole region. However, as time progressed and resulting from a long absence of a new generation of prophets, this religious system experienced several changes. At the time of the Prophet Mohammed near the Ka'abah there were several other stone objects that were honoured as gods. Ibnu Hisyam, a well-known Islamic historian has described that the tradition of worshipping these stone objects, or idolatry, which were made to resemble humans, was introduced to Mecca from Syria.<sup>2</sup> The subsequent Islamic historians were not so much concerned with the fact that the people worshipped them and idolized these statues, but that they equalled them, and the spirits whom they thought resided in them, with God, Allah.

This being the case, the statues worshipped in Mecca were not a very important factor for most of the people there, particularly the elite, because it was a 'foreign' tradition, introduced from the rural areas in Syria. The nomadic citizens did not care for them much either, because they were more concerned with retaining their tribal identity; some have called this 'tribal humanism' (*asabiyah*).

This might explain, according to the historians, why the ordinary citizens of Mecca rejected to have images representing the Prophet, and had no wish to save these statues either; neither of this had much to do with the basic principle of the new religious order that was based on monotheism. It might have happened because the elite in Mecca did not truly believe in those statues, and worshipped them purely in form only; however, they (mis) used the people's belief in these statues to further their own economic and political interests. From their perspective monotheism or any other new type of belief system or religion would only upset the existing order that was advantageous to them,

<sup>2</sup> Ibn Hisyam (1999), *al-Sirah al-Nabawiyah*, ed. Musthofa al-Saqqa, Ibrahim al-Abyari, 'Abd al-Hafidz Syalaby; 1/64-67.

destroying their economic assets and limiting their political power.

Actually it was not only the prophet Muhammad PBUH but many others as well who taught the same thing. They grew up in a strongly capitalist and materialist socio-economic context. Through their monotheist teachings Mohammed and the other prophets before him strongly criticized the existing feudal system, the abuse of power which occurred and the suffering caused by social and economic injustice. The prophet Mohammed was born to carry a message of universal humanity – which might be regarded as a system of human relations that in itself is a logical consequence of a monotheist theology.

### The position of women

Let's now turn our attention to the position of women. As mentioned before, Arab society at that time could be characterized as strongly tribal. Women actually had a reasonably good position, although they did not have the same social status as men. There had been a strongly patriarchal system since long ago . Umar bin Khattab has mentioned that the women in this era and within this social system did not have an autonomous right over their bodies. A woman's right to physical independence was only recognized after the arrival of Islam:

*"... We never thought much of women. It was only upon the arrival of Islam and when God mentioned them when we learnt to be aware of the fact that they too have autonomous rights, where we are not allowed to intervene..."*<sup>3</sup>

This statement describes a dominant practice at the time. It is supported by several other facts. Leila Ahmad (2000) has mentioned, "...in the 6th century we can say that in several aspects the Arab region was like an isolated 'island' in the Middle East, the last area where patrilineal marriages were still preferred. Although other forms of marriages were considered legal, this was the most dominant one. Other forms that occurred here were matrilineal- and uxorial-local marriages, including in Mecca around the time the Prophet was born (± 570); with these latter forms it was customary for women to remain with their tribe **after** their marriage, while their husbands would either visit them regularly or move in with her and her family, and their children would be regarded as belonging to the mother's tribe. Polyandry and polygamy too were practiced..."<sup>4</sup>

The various forms of marriages and the matrilineal tradition, in which children were regarded as belonging to the mother's tribe, did not mean that women had more power or easier access to economic resources. From Islamic sources we know that there were strong patriarchal traditions. This becomes clear from several paragraphs in the Qur'ân, including where it says that:

<sup>3</sup> In: Ibn Hajar al-'Asqallani, *Fath al Bari*; X/314.

<sup>4</sup> Leila Ahmed (2000) *Wanita dan Gender dalam Islam; Akar-akar Historis Perdebatan Modern*; transl. MS. Nasrullah; p. 45.

*“... Men are the leaders (qawwâm) of women because God made some of them better than some of the women and because men are obliged to provide for the women...” (QS, al-Nisâ, 4:34).*

And that:

*“... Women have rights that balance their duties, as long as this is in a good way (ma'rûf). But men are still always one level above women...” (QS. al-Baqarah, 2:228).*

These Qur'ân texts illustrate clearly that in the social reality of Arab society a more authoritative role was ascribed to men. However, this did not mean that there were no women who could obtain a better position than some of the men.

The Prophet's first wife, Khadiyah, before her marriage to the Prophet was an independent woman, who had her own business which she ran by herself. Various other women too played a significant social or economic role. But these might have been exceptions, not the dominant situation. Leila Ahmad has described this as follows. According to her it is difficult to prove pre-Islamic marriage practices in the Arab region, and it is equally difficult to be sure of the implications. It's just that we should not disregard the facts we have on matrilineal customs and sexual traditions that are part of a matrilineal system, including polyandry. Other scientists have expanded this view further, including Robertson Smith and Watt, who view that society at the time was strongly matriarchal and that Islam replaced it with a strongly patrilineal system.<sup>5</sup>

This view, however, only points to one of perhaps various other possibilities – it might or might not have happened in Arab society at the time. What we are sure of is the manifold traditions that existed along side each other at the time. In other regions reality might have been different. Thus Maxim Rodinson who has criticized and rejected the above mentioned view, has said that “...this was only practiced in certain places, such as Medina...”<sup>6</sup> This means that the matrilineal system was not the dominant tradition, but instead existed alongside other practices, such as polyandry and the admission that women did play an important role long before the arrival of Islam, perhaps inherited from older, previous civilizations. Other sources too mention that at the time when the Prophet was born the usual family structure was patriarchal: therefore it cannot have been Islam, as first taught by the Prophet that introduced a patriarchal system.

Divorces, and second marriages were apparently acceptable for men as well as women, and both sexes seemed able to ask for an annulment of a marriage. In the book *Kitâb al-Marâghi* it is mentioned that

*“... In pre-Islamic times women, or at least some of them divorced their husband, and the way they used to do this was, when they lived in a tent, to move the position of the tent in such a way that when the tent's door was in the east, now it was moved to the west... and when their husband would see this, he would know that she had divorced him and would*

<sup>5</sup> Ibid., p. 47.

<sup>6</sup> In: Ali Ashghar Engineer, *Asal Usul dan Perkembangan Islam; Analisis Pertumbuhan Sosio-Ekonomi*, transl. I. Baehaqi (1999), p.46.

*not visit her..."*

The kind of marriage that was considered legal in Islam was totally in accordance with the existing socio-cultural systems in the whole of the Middle East. In the Arab region patriarchal, patrilineal and polygamous marriages were no innovation. Instead Islam selectively allowed some of the existing traditions from tribal Arab society, while it rejected some others. Most importantly as an established institution it acknowledged a certain level of superiority that it assigned to men, notably in the fields of paternity and, as a subsequent issue, ownership-rights of women's sexuality. Some traditions, including polygamy, were considered acceptable, while others were regarded as improper (*harâm*). Through these changes Islam very basically re-formulated the sexual- and power relations between the sexes.

Warfare was one of the activities in which women in pre- and early-Islamic times actively took part. They would go to the battlefield, primarily to tend to the wounded, but also to restore the men's fighting spirit, often in the form of songs or poetry. Some women became well known for their inspiring verses, which resulted in the soldiers reassuming their attacks; their texts would touch upon questions of life and death, or celebrate victory. Some women took active part in the fighting. Ummu 'Athiyyah al-Anshariyah for instance accompanied the Prophet at least seven times to the battlefield; Rabi' bint al-Mu'awwidz gave the wounded water to drink and assisted them. She also sent wounded soldiers back and those who died to Medina. Other women involved in the wars were Ummu Sulaim, and Nusaibah binti Kaiab; the latter helped to carry some of the weapons used in the battle of Uhud together with the Prophet.<sup>7</sup> During the Islamic wars when the Prophet was still alive women played three roles: they were involved on both sides, and as Muhammad's wives.

In the early days of Islam women's participation in war was considered fairly normal according to many Muslims. Several religious Islamic sects which were to develop in later times made an effort to formalise this role, and established the idea of *jihâd* ('Holy War') as a religious duty, on the same level as performing one's prayers, fasting and giving alms, and proper to engage in for men as well as women.

Generally speaking there is much evidence that women in early-Islamic society were expected to participate and act in the social-, political and other activities which were needed in society, including warfare and religion. Women in this era went to the mosque, were involved in religious activities, and attended the Prophet's speeches, teachings and preaching. They were not just passive and docile, but acted as active discussion partners, not only in religious but in other matters as well. Thus the subsequent texts on the acts, thoughts, and decisions of the Prophet clearly indicate that the women who acted and spoke did so based on their right to participate in religious

<sup>7</sup> Forum Kajian Kitab Kuning (FK3): Wajah baru Relasi Suami-Istri Telaah Kitab 'Uqud al-Lujjain; Yogyakarta (2001). In co-operation with LKIS, FK3 and The Ford Foundation; p. 55.

life,; they commented on many matters, even the Qur'ân, in the expectation that their views were heard.

The *hadîth*-texts also clearly illustrate that the Prophet, in turn, whole-heartedly accepted the women's right to express their views and opinions, and always answered their comments quickly. At some point in time his woman followers, who, like the men, were studying the Qur'ân, admitted that the men appeared to be learning better and faster, and they requested the Prophet that they be taught extra, so that they attain the same level as the men. The Prophet agreed to their request. It later became clear that the men had been taught more often, in the time when the women were busy tending to their household chores (and not only during prayer-time (as the women were).) – this does not make overall sense?

The most important question asked by the women to the Prophet regarding the Qur'ân was why it only addressed the men, when the women were expected to also fulfil the appeals from Allah and His messenger. This question became the primary reason for the specific appearance (*asbabun nuzul*) of several paragraphs in the Qur'ân, which explicitly addressed both men and women (QS. al-Ahzâb, 33:35). This serves as an example that the Prophet truly took the comments of his woman followers seriously, and was prepared to support their wishes. Subsequently the Qur'ân explicitly mentions several times the expectation that women participate in social and public life. The habit of listening to- and carefully considering the views and opinions expressed by women is very clear from the Prophet's attitude, and reflects the attitudes found in wider society at the time.

That the words expressed by women carried great insights, and that they were able to answer questions with great spiritual and social meaning would become a characteristic of Islamic society in the period shortly after the death of Mohammed. This can be seen, for instance, in their contribution towards spreading the Prophet's words, acts and thoughts through the various *hadîth*. From the beginning, taking good care of these very important textual sources was an exercise in regulating social behaviour, instead of just a fleeting expression for collecting and conserving sacred memories. Accepting a woman's testimony of the Prophet's words and acts has the same meaning as accepting their authority in other fields, meant to prescribe and regulate traditions, rules and regulations.

Therefore, quite clearly we can conclude that the Prophet Mohammed was, for certainly someone who carried out changes in the social system. His ultimate idea, in accordance with God's suggestion, was to create an egalitarian social life, also from the point of view of equality between the sexes. This was quite spectacular, far ahead of its time. However, he also needed to act realistically. His ideas could never be realized in a short period of time. Notwithstanding the ways and habits in the time of the Prophet, remnants from pre-Islamic times were still powerful. In order to realize this new social

structure a rule was needed which could limit the power of the traditions that were no longer in accordance with Islam's basic teachings. The laws as presented in the Qur'ân always point out their historic and sociologic background. This in fact gave enough leverage to his followers to continue developing the Prophet's ideals.

However, we need to be aware that when Islam after the death of the Prophet continued to grow, also in some of the areas that were still strongly feudal, such as Persia, these laws were interpreted according to the social context of local society.

\* \* \* \* \*

There are those who have criticized the period of the government of Umar (r.634-644), shortly after the death of the Prophet. His rule is regarded as a period when many of Islam's main institutions were established. Umar implemented a great number of religious rules and regulations, also concerning nationality, and penal law. He is also seen as tough on women, putting limitations on their private and public life. He became easily angry with his wives and hurt them physically; he also tried to limit their activities to the realm of the house (-hold), and prohibited them to take part in the assembly prayers in the mosque. However, when he was unsuccessful in this respect, he introduced a separation during prayers, and appointed a separate *imâm* (leader of the prayer), i.e. one for the men and another for the women. The women's *imâm* was a man – which was a radical departure from the previous period, when the Prophet Mohammed PBUH had appointed a woman, Umm Waraqah, to act as an *imâm* for his whole family, which consisted, as far as we can be sure, of men as well as women.<sup>8</sup>

However, most Islamic experts give Umar a fairer evaluation. His actions and decisions are rationalized by the social changes taking place after the Prophet's death, and which went in the direction of ever greater freedom; in some cases they became out of control. Decadence was rife. Umar cannot be said to have lowered women's positions, as indicated by some. In some cases he was very open, responding positively and appreciatively to the women who criticized him.

Apparently the women in some of the Islamic regions actually supported a process of change which took them back on the path of development. This was not so much a result of Islamic ideals, but influenced by the strongly feudal culture of (local-) society. In these cultures the status of women 'returned' to the point where they were seen as bodies that needed to be controlled and protected by men. This is in contrast with the Islamic ideal that human relations should be based on values of excellence, and not on gender, nor interpreted in their respective narrow sociological contexts, which all too often fail to keep those values of excellence.

This social reality has been commented upon by Al-Jâhiz. He has said that women had been put back into their initial unequal position, as bodies which were

<sup>8</sup> In: Ibn Sa'id, at-Thabaqât; 8/335.

subordinated, marginalized, and the target of men's emotions:

*"... It has never been my opinion, and neither that of others who have a mind and can think that women are one or more levels beneath or above men. However the reality that I see shows that so many women are treated as a commodity, exploited according to someone else's needs, grossly degraded, and whose rights are taken from them. According to them, a weak man is someone who cannot fulfil the interests of fathers and uncles. On the contrary, an admirable man seems to be someone who can abuse the rights of mothers and aunts..... (And) even though social reality shows that the majority of men apparently exceeds women in excellence, they still have no right to abuse their rights. It does not make sense that when they honour their father, they should degrade the rights of their mother..."*<sup>9</sup> []

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<sup>9</sup> From: *Rasâ'il al-Jâhizh* III/116-120. In: Husein Muhammad, *Spiritualitas Kemanusiaan; Perspektif Islam Pesantren* (2006):277.

# Fiqh from Women's Perspective 7

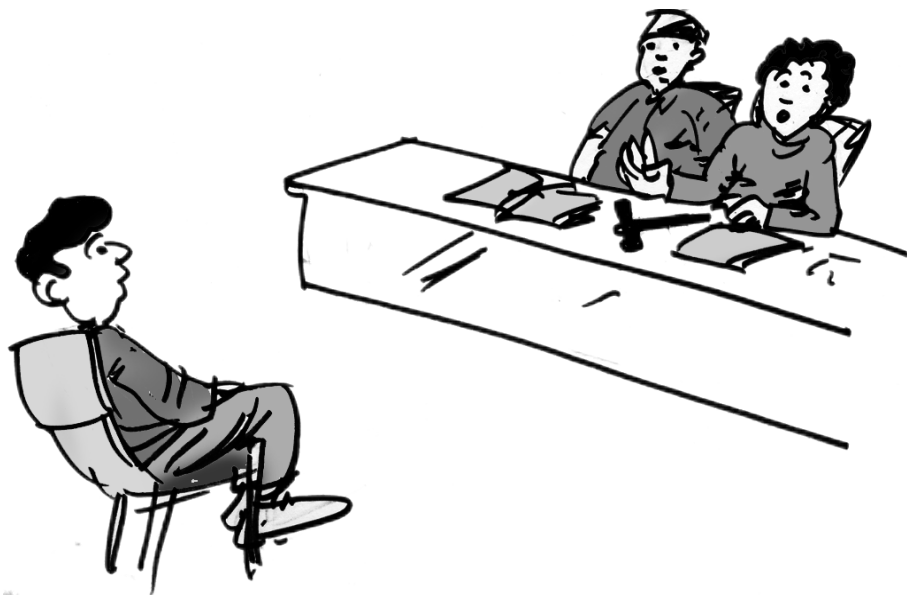




**T**he material in this section concerns our understanding of fiqh, the Islamic legal system that consists of more or less fixed laws on the one hand, detailed rules for proper codes of conduct and a collection of 'preferable', meritorious rules on the other. Here fiqh is presented as the product of our interpretation of texts and knowledge from the Koran and the hadiths, which only developed in to the social and legal system in the course of time, slowly acquiring its present meaning as the ultimate reference for all Muslims. In this section it will be explained that fiqh contains (local) traditional elements as well as cultural, social and political ones.

By implementing certain methods that are still closely connected to the classical ushul fiqh, and regarding fiqh as general agreements (ijtihad) from a historical as well as from a contemporary perspective makes it possible to re-read and to formulate fiqh from a women's perspective.

The need to re-interpret some of the rules and regulations (laws) formulated in classical fiqh comes forth from the wish to address some of the gender-unjust issues that have developed in fiqh. Gender-biased, and therefore discriminative, some of these rules seriously prevent women to discover and further develop their self esteem and potential in a similar way as is normal for men. Based on the material presented in the previous sections we know now that this is contradictive to some of the Qur'an- and hadiths-texts, which emphasize gender equality.





## OBJECTIVES

After the participants have finished this section, they will be able to...

- Know and understand the basic words and terms used in *fiqh*;
- Understand the relation between *fiqh*, *usûl fiqh*, *qâ'idah fiqh* and positive law;
- Recognize the basic principles and characteristics of *fiqh*, and the relation with its social context (which served as the background for its development);
- Know about the various *madhhab fiqh*, or 'schools of thought' that have developed in the field of *fiqh*, and the social context which gave rise to their development;
- Understand the basic methodological characteristics of the four *madhhab* (schools of thought) in the field of *fiqh*;
- Know about the women *ulamâ* (Islamic scholars) who were involved in the development of the *madhhab fiqh*;
- Know about the gender biased topics in *fiqh* literature;
- Recognize a women's perspective as can be found in the 'minor traditions' of *fiqh madhhab* and re-reading/re-interpreting the *fiqh* tradition;
- Know some of the more gender-just legal norms in *fiqh*;
- Have knowledge of some of the contemporary ideas in *fiqh* that support a greater degree of gender equality.



## POINTS FOR DISCUSSION

- The meaning of *sharî'ah*, *fiqh*, *fatwâ*, *qadâ*, *qânûn* and Islamic law;
- The relation between *fiqh* and positive law;
- Basic knowledge of *usûl fiqh* and *qâ'idah fiqh*, including *fiqh's* five basic principles;
- *Fiqh's* basic principles, such as *tadrîj*, '*adam al-haraj*, *at-taysîr* and others;
- Basic characteristics of *fiqh*, including perspectives that are *ijtihâdiyy* (based on agreement), pluralist, relative, casuistic, and flexible;
- The process of formulating the rules for *fiqh*, which is influenced by (existing) texts, human intelligence and logic, and authority;
- The socio-historic development of the various *madhhab fiqh* (schools of thought);

- The methodological characteristics of the four *madhhab*, such as *istihsân*, *maslahah mursalah*, *qiyâs*, and *hadîth dha'îf*;
- The role of women *ulama* in the development of *madhhab fiqh*;
- Gender biased topics in *madhhab fiqh*;
- Women's perspectives in the *fiqh* tradition;
- Principles in *fiqh* that support gender equality and justice, such as *fiqh al-maslahah*, *fiqh al-maqâsid*, *fiqh al-'illah*, *fiqh al-waqi'*, *fiqh al-ijma'*;
- Contemporary ideas in *fiqh* that support gender equality and justice.



### METHOD

Contribution by a speaker/expert, questions-and-answers round, group discussion.



### TOOLS

Sticky cloth, white board, markers, plain paper, paper to make a *meta-plan*, cello tape.



### TIME

8 Hours.

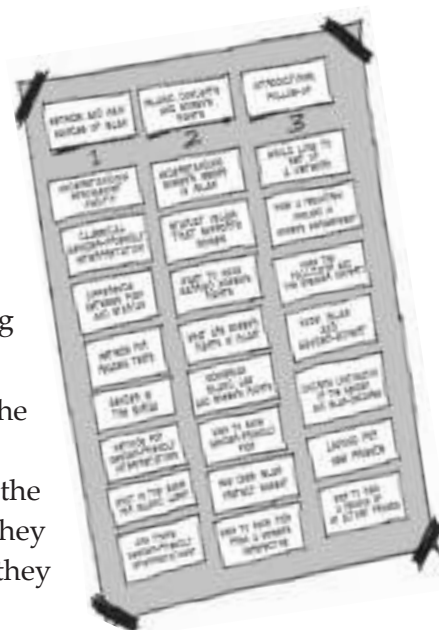


### STEPS

*First stage (1½ hours):*

1. The facilitator starts this session with an introduction of a legal case from *fiqh*, presenting the infamous case of a husband slapping his wife; the facilitator has to make sure that this diagram is available for the group (See: *Notes for the facilitator*). Next, the participants are asked to position this case in its proper place in the diagram (**Illustration #9**).
2. Have two sets of writing cards ready for the participants, in different colours, for instance green and red; prepare a piece of sticky cloth and make sure everything is there for the participants to set up a meta-plan.

Ask the participants what they know that will, or must happen in the case of a husband slapping his wife according to Islamic law/ concepts; make them write down their answers on the cards, one card for each answer.



Have them stick their answering cards on to the diagram.

3. Try to come to a conclusion on the various answers.
4. Distribute all the red cards, and ask the participants to write down how they feel about this case and/or what they think about it. Repeat steps 2 and 3.
5. Next, try to objectify the conclusions: the facilitator emphasizes the variations in the participants' answers, which illustrate clearly the variations in-, the flexibility of-, and the relativity of the regulations in *fiqh*; but continue to relate it to the arguments used to address this case, which were developed by the *ulamâ fiqh*, based on texts from the Qur'ân, *hadîth*, and other legal references.

**Second stage (1½ hours):**

*This involves working with the invited speaker/expert.*

6. Based on the initial slapping-case the facilitator introduces the invited speaker/expert to explain the various basic steps to arrive at a legal decision based in *fiqh*, and some of the basic terms used in *fiqh*, such as *shari'ah*, *fiqh*, *fatwâ*, *qadâ*, *qânûn*, *usûl fiqh*, *qâ'idah fiqhiyyah*, *ijtihâd*, *mujtahid* and so on.

Here the speaker could well refer to another example (apart from the slapping-case used earlier) which also illustrates the characteristics of a *fiqh*-ruling that is influenced by other factors outside *fiqh* itself, such as the geographic, cultural, and ideological context, political interests and so on. By discussing a particular case in this way will

make clear its relation to where and how it is mentioned in the Koran, the *hadîth*, and its more extensive discussion in the language of *fiqh*.

7. The next step concerns elaborating the idea that *fiqh* is the outcome of thoughts and ideas formulated by the *ulamâ*, who use particular methods to reach their decision, which is known as *usûl fiqh*.

The speaker should explain about *usûl fiqh* and the four schools of thought (*madhhab*) that have historically developed in *fiqh*, mentioning the factors that have influenced these developments.

The *madhhab* to be discussed here include Hanafi, Maliki, Syafi'i and Hanbali. Some of the characteristic terms (elements; principles) used in their respective methodologies should also be mentioned here, such as *istihsân*, *maslahah*, *qiyâs* dan *al-'âdah al-muhakkamah*.

Furthermore the speaker should discuss some of the important themes in *usl fiqh* ('legal methods') and *qâ'idah fiqh* ('legal principles'). These include *qat'iy-y-zanny*, *muhkam-mutasyâbih*, *nâsikh-mansûkh*, *maqâshid al-syarî'ah*, *al-hukmu yadûru ma'a illatihî* and *al-aslu fi al-mu'âmalât mabniyy 'alâ al-ma'âni la 'alâ al-alfâzh*.

8. Based on the previous steps, the speaker/expert tries to formulate conclusions concerning the basic characteristics of *fiqh*: that it is in fact a pluralist, casuistic, relative, and flexible system (-of thought); that it is not sacred and that it originates in culture and society. (NB: Use the diagrams at the end of this section, Illustration # 10 and # 11).

#### ***Finalizing this stage (one hour):***

9. To round off this session, the participants are asked to have a questions-and-answers round with the speaker/expert. Here they should feel free to ask as many questions and give as many suggestions as they feel is necessary.

#### ***Third stage (1½ hours):***

10. The facilitator guides the participants along to study the material more thoroughly, based on the texts in this section that refer to a specific case each (case-study: cases 1-3 at the back of this section).
11. The participants are divided in groups of at least 5 people; the

facilitator gives each group its own text.

12. Each group discusses the material from the case-study, and the various arguments are written down and put in to one of the columns of **Illustration # 9** (at the back of this section). Each column represents the basis for its legality, including 'Based on a Koran text', 'Based on a *hadîth*-text', 'Interpretation according to *Fiqh*' and 'Developing arguments'/'a gender-friendly interpretation of *fiqh*'.
13. The facilitator emphasizes that women's issues in *fiqh* have developed far from the Qur'ân- and *hadîth*-texts, and points out that there is a strong dynamic between traditions and culture on the one hand, and the development of *fiqh* on the other.
14. The facilitator closes this session and the group discussion by formulating a conclusion as presented in the diagram 'Characteristics and function of *fiqh*' (**Illustration #12**).



**Fourth stage (1 Hour):**

15. Based on the conclusions of the case-studies, the facilitator invites the speaker/expert to further discuss some of the issues pertaining to women. The facilitator, assisted by the participants, brings forward cases that are gender-biased (if possible using examples other than the case-studies in the manual). The facilitator asks the participants to make clear in what way/why there is a gender-bias, and writes down the participants' answers.
16. Based on the examples of cases formulated in the previous step, the speaker/expert discusses the issues brought forward further, focusing on 3 elements: a). gender-biased issues in *fiqh*; b). methodology to interpret and use *fiqh* in a non-gender biased way; c). applying a non-gender biased methodology in formulating new *fiqh*, one that guarantees justice for all.
17. As a conclusion the speaker/expert emphasizes a women's perspective

in the *fiqh*-discourse, and not only **that**, but also **in what way** women are regarded as the subject of interpretation. Furthermore that it is imperative that one supports the woman's perspective whenever she risks being treated unfairly or unjustly, becoming a victim of social imbalance or one-sidedness.

***Fifth stage (1½ Hour):***

18. The facilitator invites the participants to formulate questions on the presented material, and gives the possibility for further comments, suggestions, and so on.
19. To close this part of the session the facilitator emphasizes the methodological rules that enable us to reach a non-gender biased ways of using *fiqh* (See: **Diagram on Methodology/Illustration #13**).

***Sixth stage (1½ hours):***

20. The facilitator now guides the participants in an activity to bring into practice a non-gender biased approach for using *fiqh*. The participants are invited to formulate a (set of-) rule (-s) for a specific legal case, using whatever arguments they think are necessary, based on *turâth al-fiqh* and *usûl al-fiqh*.
21. The technique to do this is to divide the participants in small groups of 5 persons. Ask the members of each group to answer the questions for the cases as they are provided.
22. The outcome of each group's discussion is written down, either straight in the computer or on plane paper, so that these can be presented to the other groups.
23. The facilitator discusses the various groups' arguments, and separates them in those that are correct, incorrect, or too far off from the objective, at all times based on a non-gender biased perspective and methodology.
24. As a conclusion the facilitator returns to the **Diagram on Methodology**, to emphasize and further sharpen a women's perspective (see **ill. #13**).



## REFERENCE

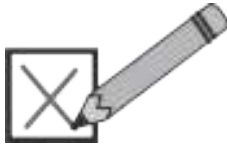
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### Notes for the facilitator:

- ✓ Prior to the session the facilitator should already have prepared the following:
  - An illustration on the whiteboard showing a long line in the shape of an arrow, pointing to its two extremes. The 'arrow' connects the writing on the extreme right that says 'Wajib - COMPULSORY' and on the extreme left that says Haram- 'UNACCEPTABLE' (See **Illustration #10**).
  - The texts of the four case-studies on women's issues. Each of these cases illustrates an example of one such issue, mentioned in the Koran or hadiths and subsequently taken up becoming part of the context of fiqh.
  - The text that explains about the various fields in which fiqh is used and implemented, i.e. ibadah, mu'amalah, munakahah, murafa'ah, siyasiyah, jinayah and 'alaqah dawliyyah.
  - Compilation of Koran- and hadiths-texts which are needed to explain and/or to illustrate a non-gender biased methodology for fiqh.
- ✓ The speaker/expert should, before the start of this session, familiarize him- or herself with the diagrams on fiqh as presented at the back of this section (**Illustration # 11,12,13**), and the relation between fiqh, culture, society, and politics.



## CASE STUDY 1:

## CIRCUMCISION

There is no mentioning of circumcision in the Koran, neither for men or for women. Some *ulamâ* have found the ethical basis for circumcision in the 123<sup>rd</sup> verse of the Qur'ân text an-Nahl, which implies (but very indirectly) that circumcision was part of Abraham's religious teachings.

There are several references on circumcision in various *hadîths*. Yet the validity of these texts can not be convincingly confirmed by some of those who have studied them. The first hadith mentioning circumcision originates from Abu Hurayrah, who has said that the Prophet has said that "... Circumcision is *sunna* for men and noble for women...", as was told by Ahmad (Ahmad Ibn Hambal; *in*: al-Musnad, juz V, pp.75). The same was told by al-Hajjâj bin Artha'ah. However, jurists (like Imâm al-Shawkani: *Nayl al-Awtâr*; Imâm Ahmad: al-Musnad; and Imâm al-Bayhaqi: *Sunan*) regard bin Artha'ah as a *mudallas*, someone who often misinterprets a hadith, thus indicating its invalidity. According to Al-Bayhaqi this hadîth is weak and incoherent (al-Shawkâni: *Nayl al-Awtâr*, juz I, pp. 139).

The second hadith comes from al-Zuhri, which says that the Prophet has said that "... those who have converted to Islam, do circumcise, even though they are already adult..." This hadith was recorded by Harb bin Sufyan (*in*: al-Asqallâni: *Talkhîs al-Habîr*, juz IV, pp. 82); yet some experts do not accept it as a *hujjah* and doubt its validity.

The third hadith comes from Umm 'Athiyah, who has said that "... there is a woman expert for circumcision for women in Medina..."; the Prophet told her: "...don't overdo it, for it's part of [woman's enjoyment] and the love of her husband...". In another text the Prophet reportedly said: "...Just cut the tip only and do not overdo it..." (Abu Dawud, al-Sunan, *in*: Book of al-Adâb, hadith no. 5271, juz IV, pp.386; see also: Ibn al-Athîr, *Jâmi al-Usûl*, juz V, pp.348). Abû Dâwud considered it a weak hadith, because one of the transmitters was not identified (*majhûl*; *in*: Abû Dâwud, *ibid*; see also: al-Asqallâni, *Fath al-Bâri*, juz XI, pp.530).

In *Talkhîs al-Habîr*, Ibn Hajar responded differently to some of the hadith related to circumcision, based on the way they were transmitted. Commenting on these texts he quoted the opinions of some religious legal experts, *ulamâ fiqh*, some of whom had said that there was a problem in transmission (*ma'lûl*); others had said it was an invalid hadith (*dla'if*), and according to others the text was *munkar*, unacceptable. Ibn Hajar quoted a statement of Ibn-al-Mundhir, saying that "...there's no hadith that refers to circumcision, and there's no traceable link (*sanad*) from the various hadith narrators

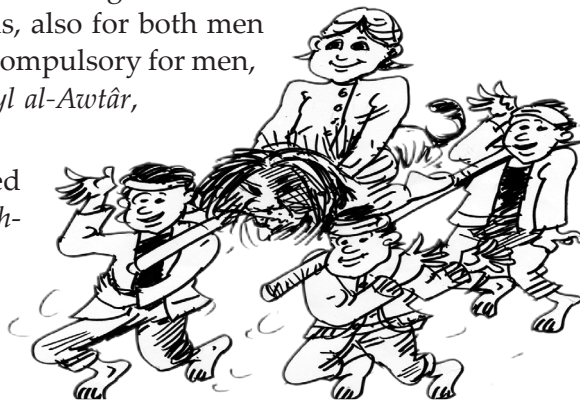
either..." (Al-'Asqallâni, Ibn Hajar: *Talkhîs al-Habîr*, ed. Al-Sayyid 'Abd al-Lâh Hashim al-Yamâni; Madinah al-Munawwarah [1964]; juz IV, p. 83). Sayyid Sâbiq, author of the *fiqh al-sunnah* encyclopedia goes even further, saying that "...all hadith relating to circumcision for women are *dha'if* (invalid); none of them is *sahîh* (valid)..". (Sâbiq: *Fiqh al-Sunnah*, juz I, p.26). From the material quoted above we might conclude that most references to circumcision for women are invalid – a statement supported by such scholars as Imam Ibn al-Mundhir, Imâm al-Shawkâni, Muhammad Shaltut, Sayyid Sabiq, Wahbah al-Zuhayli, Muhammad al-Banna, and Anwar Ahmad.

However, the discussion regarding circumcision according to *fiqh* has become very varied. According to Ibn Hajar al-'Asqallani there are two main perspectives about circumcision. According to one view circumcision is compulsory for men and women - an opinion that is supported by Imâm as-Shâfi'i and the majority of this *madhhab* [school of thought]'s ulama. The other view, held by the majority of ulama (some of them from *madhhab*-Shafi'i) holds that circumcision is not compulsory. The above mentioned Ibn Hajar has pointed out that in practice even some of the followers of the Shâfi'i school of thought harbour different opinions about circumcision for women. Some have said it is compulsory for all women, while others hold the view that this is only the case for women with a certain physiological particularity: whose clitoris' end is rather big. Some ulama from *madhhab* Shafi'i, finally, do not consider it at all compulsory (Al-'Asqallâni: *Fath al-Bâri*, juz XI, pp. 531).

In his contemporary *fiqh* writing, Shaykh Muhammad Shaltut said that circumcision, for men and women, has no direct relation with religious texts, because, in the first place there's no *sahîh* (valid) hadith on this subject, and secondly, the arguments offered by ulama who support circumcision (from a *fiqh*- or legal perspective) are very weak. *Fiqh* only supports circumcision and allows it when and if it benefits the person who will be circumcised (Shaltut, Muhamad: *al-Fatawa*, pp. 302).

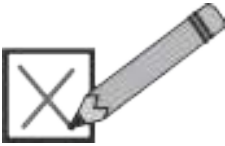
According to Imam al-Shawkani there are three different opinions that are supported by the ulama concerning circumcision. According to one view circumcision is compulsory for both men and women; according to the second view it is *sunnah*, "better", or meritorious, also for both men and women. A third view holds that it is compulsory for men, but not for women (in: al-Shawkâni: *Nayl al-Awtâr*, juz I, pp. 138).

Wahbah al-Zuhayli has described these different opinions in his *fiqh*-encyclopedia. He has concluded that "...Circumcision for men, according to *madhhab* Hanafi and Maliki is *sunnah mu'akaddah*, or 'close to being



mandatory'; while for women it is a noble thing (to do), even though it is recommended to not overdo it so that she could still easily feel the enjoyment during sexual intercourse. According to Imam Shafi'i (*madhhab* Shafi'i) circumcision is compulsory for men and women, while Imam Ahmad has said that "... circumcision is compulsory for men and a noble thing to do for women, particularly so in tropical areas..." (al-Zuhayli: *al-Fiqh al-Islâmi wa Adillatuh*; Damascus, Dar al-Fikr [1989], juz III, pp. 642).

In *fiqh*, the ulama differ on whether they should support the ethics of circumcision, either for men or women, or men and women, or only for men. The differences suggest the possibility of traditional and cultural influences on achieving a mutual consensus, *ijtihâd* among the legal- and other religious experts. The tradition of circumcision is in fact deeply rooted in many societies from the period preceding the development of Islam, including Arab culture, the Jews, and other non-Semitic ethnic groups.[]



## CASE STUDY 2:

### WOMEN'S LEADERSHIP

**V**arious Qur'ân verses actually mention women's leadership. The first one is in al-Nisâ (QS.[4]: 34), which states that "... men are the protectors and maintainers of women, because Allah has prepared some of the men better than some of the women and because they (the men) provide them (the women) with parts of their wealth...". Next, since leadership is often associated with the principle of *amar ma'rûf nahi munkar* the following verse (QS. At-Tawbah [9]:71) is also suitable to be associated with leadership, where it says that "... the believers, men and women, are protectors of one another. They enjoy what is just, and forbid what is evil... ". Thirdly there are the verses about the leadership of Queen Bilqis of Saba.

Women's leadership was mentioned explicitly in one *hadith* by Abi Bakara. He is quoted as saying that "...Allah has enlightened me through what I heard in the sayings of the Prophet, when I was about to engage in the War of Jamal (Camel). The Prophet told us that the Persians had appointed a woman (queen; leader) from the Kisra as their next ruler. (At that precise moment) the Prophet said that "...any nation ruled by women will not be fortunate..." (Al Bukhâri: *al- Sahîh*, juz IV, p.1610; no. 4163). Rules and regulations that prohibit women's leadership are often based on the *hadith* mentioned above. However, many *ulama fiqh* (Islamic legal experts) view things differently.

The majority of conservative *fiqh* experts think that politics – again, based on the principle of *amar ma'rûf nahi munkar* - are obligations of men and women alike. Seen from this perspective, the *ulama* support the equality of men and women. However, in the field of practical politics that require public decision-making, *al-wilâyah al-mulzimah*, as in courtrooms (where a person has to perform the role of a judge), but also in legislative or executive bodies and public governance, or *al-wilâyah al-'uzmâ*, not all tasks can be assigned equally to both genders. Back in 1952, Al Azhar University published the following statement:

"...Islamic shari'a prohibits women to hold the position of public leaders, which include executive positions (decision maker: *al-sultah al-mulzimah*) in public affairs, *al-jamâ'ah*. This includes holding positions in legislature (law-making), the judiciary (i.e. presiding in courts), and executive positions in the field of constitution..."<sup>1</sup>

Judicial power, or one's appointment in to a position within society's legislative

<sup>1</sup> in: *Lajnat Fatwa bi al-Azhar, Hukm al- Syari'ah al-Islamiyah fi Isytirak a- mar'ah fi al- Intikhab li al-Barlamân*, in *Al- harakah al- Nisa'iyah wa Silatuha bi al-isti'mar*, ed. Muhammad Atiyah Khumays, p.101).

institutions is considered the highest power, and it is seen as an important public role (*al-wilâyah al-'âmmah*). Many would say that this kind of power is also obligatory, *al-sultah al-mulzimah*. According to the *ulamâ al-fiqh*, to hold such a position, particularly the position of judge, one must fulfil a series of requirements, such as being a Muslim, intelligent, mature, independent, physically and mentally fit, and have adequate understanding of the Shari'a. However, there are different opinions regarding the requirement of gender. At least there are three main arguments.

The first view is supported by Mâlik b. Anas, Al-Syâfi'i and Ahmad bin Hanbal, who have stated that judicial power should only be given to men and not to women. According to them, since a judge is required to attend open court sessions with many men attending, the judge must possess an exceptionally high intelligence, *kamâl al-ra'yi wa tamâm al-'aql wa al-fatânah*, and women are thought to be less intelligent than men, or *nâqisât al-'aql, qalîlât al-ra'y*. Serving as a judge also means that a woman will have to communicate openly and directly with men (who are not her relatives: strangers), and these kinds of encounters might easily lead to accusations of *fitnah* (*fitnah* here in the sense of 'eliciting': seducing others to engage in unlawful/immoral acts). According to those who support this view neither the Prophet nor the Khulafaur Rasyidin or any other Islamic leaders have ever granted women any judicial power.<sup>2</sup>

The second argument is supported by Hanafi and Ibnu Hazm al-Zâhiri. According to them, masculinity is not an absolute requirement for holding a judicial position. Women should be allowed to act as judges, as long as they preside over lighter cases, i.e. excluding cases from *hudûd* and *qisâs*. Referring to *fiqh*, which agrees that women are allowed to act as witnesses in a private case, they should therefore also be allowed to act as a judge in such cases. Besides, judges and (political-) rulers are not quite the same. Judges are assigned only to execute and convey religious laws. Their function is similar to that of a *mufti*, a person authorized to issue a legal decree or *fatwâ*.

This view does not acknowledge the hadiths on women leadership as a legal basis for judicial functions. Ibnu Hazm has added that Umar bin Khattab once assigned a woman in an important public function, namely to be a public market treasurer.<sup>3</sup>

The third argument states that women may preside as judges in any case, public or private. Being a man is not an absolute requirement for judicial positions. This argument came from Ibnu Jarir al Tabari and Al Hasan al- Basri. According to them, when women can act as a *mufti* then it is only logical if they can act as judges as well. Where a *mufti*'s task is to explain religious laws based on scientific analysis but on a level of personal responsibility, judges are responsible to states or constitutions (even though they have

<sup>2</sup> See: al- Syarbini: *Mughni al-Muhtaj*, juz IV, p.375; Ibnu Rusyd: *Bidayat al-Mujtahid*, juz II; and p 449).

<sup>3</sup> See al Kasani: *Bada'i al-Sana'i*, juz VII p.3; Ibnu Hazm: *Al-Muhallâ*, juz IX, p.429-430; Al Zuhayli, Muhammad Musthafa: *Al-Tanzîm al Qadâ'i fi al Fiqh al- Islâmi*, pp 29.

a similar task).

How do *fiqh* experts view women's roles in the legislative field? First of all, we should recognize that according to Islamic political theories, the world of the legislative (judiciary) is part of the highest level of government. Besides their main task to elect the head of state, i.e. *Imâm* or *Khalîfah*, the members of a country's highest legislative bodies are responsible for making laws and other state policies. Thus Al-Mawardi and Abu Ya'la, both Sunni political experts, have formulated a series of requirements for the members of these legislative institutions, known as *ahl al-halli wa al-'aqdi* or *ahl al-ikhtiyâr*. Some of the requirements include being fair and impartial, and capable of electing the head of state. They did not explicitly mention the legal status of women, should they become members of a legislative council. But elsewhere, in other fatwa, they have stated that women should not hold a position directly under a head of state, such as *Wizârah al-Tafwîdh* (Prime Minister) and *Wizârah al-Tanfîdh* (State Ministers) and other judicial roles. The argument used here is that these positions require capabilities that are significant to general functions and power (*al-wilâyah al-'âmmah*), and women are considered inadequate to fulfill these roles.

This argument was also adopted by Al-Mawdûdi, a famous Islamic thinker and leader of Jama'at al-Islami. Al-Mawdûdi formulated explicitly that public roles associated with decision-making processes could only be assigned by men. He quoted both a verse from al-Nisâ [4]: 34 and the Abu Bakarah hadith (that mentions failure for a nation if it is led by a woman). Mawdudi also used another argument, because he saw that the appointment of women in to the legislative field would intensify the direct interaction between the sexes, which is strictly prohibited by Islam. He is quoted as saying that:

*"...In principle, the nature of this field is not limited to making laws only. It is also about carrying out national political decisions. This field determines departments and national outlines. It also decides whether a nation should go to war or remain in peace. With reference to these reasons, the functions in this field are not similar to that of a faqih or a mufti. This branch is about qawwam, about state affairs..."*

On the contrary, Dr. Sa'id Ramadhan al-Buti, a well-known ulama from Syria, has expressed a different opinion. He said that according to most ulama a *syûrâ*, or 'public discussion' is quite similar to a *fatwâ*. The members of parliament therefore have a similar task to a mufti. Since all *ulamâ* agree that women can act as a mufti, they should thus be allowed to act and be elected as members of parliament.

There is confusion over a women's appointment to the most powerful political position and public office, such as a national head of state or president, or a governor, a mayor, a regional leader or village head, and whether or not women are not entitled to act as leaders in any field. Until the present not one single *fiqh* expert has supported a woman to act as head of state. Someone like Syah Waliyullah al Dahlawi has stated

that a *khalîfah* ('political leader') should be a man of reason and maturity; he should be independent, brave, smart, attentive, alert, and eloquent. According to him these are universal requirements, which have been agreed upon by all human beings anywhere and anytime (al Dahlawi, Shah Waliyullâh, Hujjat al Lah al Bâlighah (Beirut: Dar al-Ma'rifah, Juz II, p. 149).

Wahbah al Zuhaili has also stated that a Head of State should be a man, a requirement that has been agreed upon (*ijmâ'*) by all *fiqh* experts (Al-Zuhayli, al-Fiqh al-Islami, [1997] juz VIII p.6179). In another occasion, he also stated that

*"...It is illegal for women to hold a leading public role such as head of state or Governor (al Imâmah al Uzmâ). The Prophet, Khulafâ al- Râsyidîn and their successors have never appointed a woman as judge or governor (wilâyah balad)...".* [ ]



### CASE STUDY 3:

## A WOMAN'S RIGHT TO GET MARRIED

**C**an a woman get married without the permission of a legal representative ('guardian'; *wâli*)? Can a Muslim woman get married without a legal representative? Can a woman marry someone else (her son or daughter) a couple? These are some of the question addressed in this case study.

Various verses from the Qur'ân form the basis for this discussion.

Some of these indicate a woman's independent right to choose a husband and to get married:

- Al-Baqarah (2: 230) states: "...And if [a husband] has divorced her (for a third [and final] time), she is no longer lawfully his, until she has married another husband..."
- Al-Baqarah (2: 232) states: "...And when you have divorced women and they have fulfilled the term of their prescribed period of seclusion [iddah], do not prevent them from (re-) marrying their [former] husbands, if they mutually agree on a reasonable basis..."
- Al-Baqarah (2: 234) states: "...When they have fulfilled [their period of] iddah there is no sin on you if they (the wives) dispose of themselves in a just and honourable manner..."

Other verses from the Qur'ân refer to dogma's on marriage, as in

- Al-Baqarah (2: 221): "...And do not marry al-Mushrikat<sup>1</sup> until they believe (and worship only Allah)..."
- Al-Nur (24: 32): "...And marry those among you who are single (i.e. a man who has no wife and a woman who has no husband) and (also marry) the Sâlihun (the pious, fit, and capable ones) from your (male) slaves and maid-servants (female slaves)..."

The discussion should really include many of the *hadîth*.

A good example is the story told by Aisyah about the visit of a young woman, Khansâ binti Khidâm al-Anshariyah, who came to visit the Prophet and had the following story to tell:

"...My father has married me to his brother's son. My husband was expected to eliminate his bad manners by marrying me. [But] I don't like him...". Aisyah then said: "...Stay here for a while, so that we can wait for the Prophet." When The Prophet arrived, she told him her problem. The Prophet called her father and asked the father'

<sup>1</sup> Al-musyrikat (*musyrik*): heathens, un-believers ==> non-Muslim women.

permission to submit his daughter's problem into his responsibility. The daughter said to the Prophet: "...Dear Prophet, I obeyed my father and I have done what he has asked me to [do]. I only wish to say to other women that fathers actually have no rights in this matter...". (As told by al-Nasâ'i, in: Ibn al-Athâr, *Jâmi' al-Ushûl*, juz XII, p. 140; *hadîth* no. 8974).

Another *hadîth* mentions that "...A widow has more rights over herself than her legal representative (guardian: *wali*). When [a girl] is asked for her permission, her silence indicates her permission...". (As told by Imam al-Bukhari; see: Al-'Asqallânî, Ibn Hajar, *Bulûgh al-Marâm min Adillat al-Ahkâm*, ed. Muhammad Hâmid al-Faqiyy (Pekalongan: Raja Murah Printing, s.a., p. 205.)

In another *hadîth* we can read the following situation: "...Aishah has said that The Prophet has said that 'If any woman gets married without the permission of her legal representative, then the marriage is void, the marriage is void, the marriage is void. If she has had sex, she deserves commensurable dowry (*mahar mitsil*) for the sex to be considered permissible. If they [the women who want to get married] belong to the enemy, the sultan (king/ruler) will become guardian for the woman who has none...". (As told by Abû Dâwud and Ibn Majah Al-'Asqallânî, *Bulûgh al-Marâm*, p. 204. See also: Abû Dâwud, *al-Sunan*, in the book 'al-Nikâh', *hadîth* no. 2083, juz II, p. 229; and Ibn Mâjah, *al-Sunan*, book 'al-Nikâh', *hadîth* no. 1879, juz I, p. 609).

Another *hadîth* mentions that "...A woman can't act as a legal representative (guardian: *wali*) neither for another woman nor herself...". (As told by Ibn Mâjah; Ibn Mâjah, *al-Sunan*, in the book 'al-Nikâh', *hadîth* no. 1882, juz I, p. 610.)

Abû Musa al Asy'ari has said that the Prophet once said that "...No marriage is allowed except with a legal representative present...". (Abû Dâwud, *al-Sunan*, book 'al-Nikâh', *hadîth* no. 2085, juz II, p. 229.)

There are various different opinions among the *ulamâ al-fiqh* (legal experts) attempting to define who is entitled to act as a legal representative (*wâli*), especially for *ijâb* (legalizing the marriage vows) in marriage.

However, there is one view, as represented by Imam Abû Hanifah, Abû Yusuf, Zufar, al-Awza'i and Malik bin Anas, which holds that a *wali* is not entitled to legalize a marriage when the woman who gets married is his daughter, or a widow, or an adult girl. The definition of 'adult girl' here refers to young women who are already mature, *bâligh*, and considered mentally sane (*al-bâlighah al-'âqila*). In these three cases it is the women themselves who are entitled to represent themselves (and have the right to perform their own marriage), even though they might still delegate this to a *wâli*. Therefore according to this view there are some cases in which a woman has the full right to get married, to marry, and to deliver her own wedding vows (*ijâb*).

This opinion is based on verses from the Qur'ân, *hadîth* texts, and other texts

considering the actual 'purpose of marriage'. According to Islam a marriage serves two main purposes. Its primary purpose is to legitimize sexual intercourse between the two individuals who get married. The secondary purpose is to create family relations (between the families of the two individuals concerned). The primary purpose of marriage should be seen as the right of a woman herself, while the secondary one could be granted to the woman and her family by someone else or as the outcome of negotiations between the two families involved.

Another view with which most *ulamâ* agree states that women are entitled to independently conduct lawful activities related to financial transactions, as in trade, etc. This in turn confirms the idea that (in theory at least) a woman is perfectly able to take care of her personal affairs. A woman's right to choose her future husband and to get married are, for instance, seen as part of her personal rights. Therefore when a marriage is conducted under the guidance of a *wâli*, who also delivers *ijâb* (marriage vows) it is considered legal only when and if the woman who is getting married has given her consent and agrees with the role and involvement of the *wâli*. A marriage conducted with the guidance, assistance and support of a *wâli*, according to this opinion, is considered *sunnah* ('noble and rewarded': meritorious).

A much sterner view has been formulated by some of the leaders from *madhhab fiqh*, including Imam Syâfi'î, Imam Malik bin Anas, Asyhab, Imam Sufyân al-Thawri, Ishâq bin Râhuyah (Rahawayh), Ibnu Shubrumah and Ibnu Hazm. According to this view a marriage where *ijâb* is conducted by the woman who is getting married, be it a widow (or a divorcée) or a virgin, is not legal. This view too is based on verses from the Qur'ân, *hadîth*-texts, and some of the texts formulating the purpose of marriage (which, according to this view, essentially concerns forming a 'happy' [i.e. grand, or: combined] family). According to this view a marriage should not be limited to fulfil the individual interests of the two people who get married, but should reflect the role (interests) of their respective families as well. From this perspective a woman is generally not seen as having the right to independently choose her future husband. The main reason for this is that a woman's emotions might supposedly get in the way of her reason, which might lead to her marrying a man who is not fit for her ('improper').[]

**Illustration 9**  
*Results of Discussion On Fiqh Cases*

Type of Case	Qur'an Reference/s	Hadith Reference/s	Fiqh Opinion/s	Arguments Developed
Group 1 Circumcision				From Fiqh/ Women's perspective
Group 2: Leadership				
Group 3: Abortion				
Group 4: Right to Marry				

Illustration 10:  
*Ulama's perspectives on the legal status of domestic violence against women*

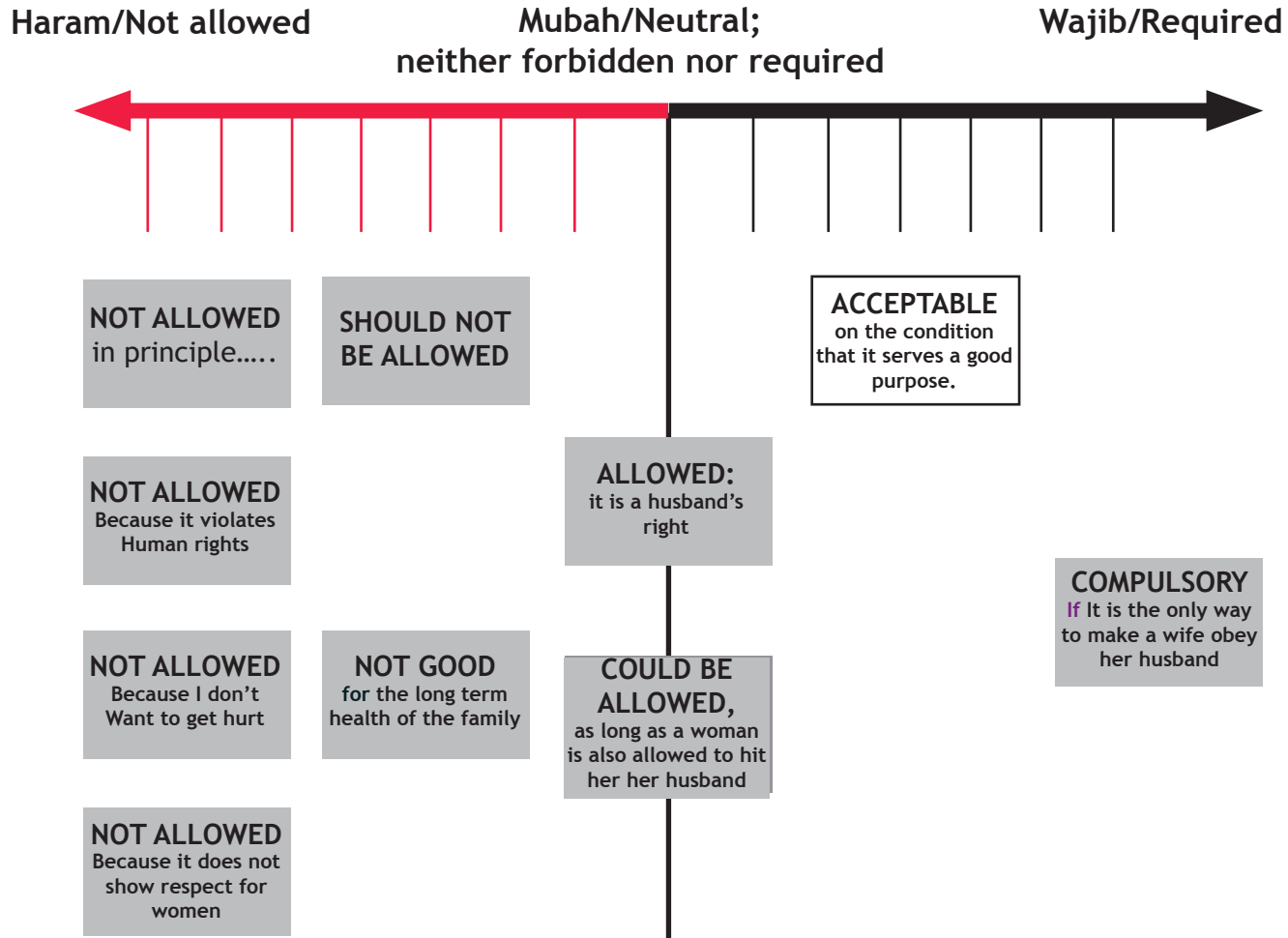
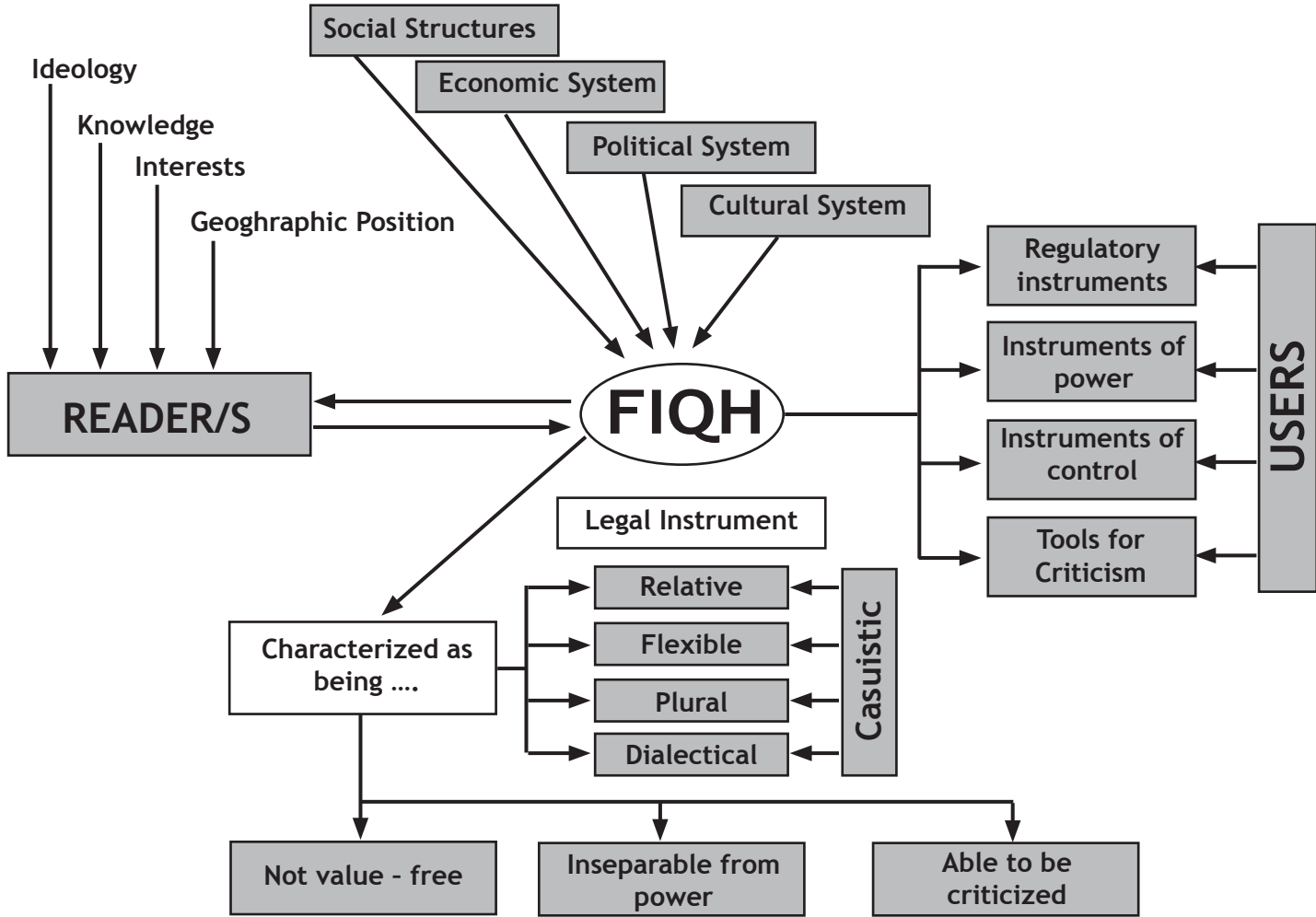


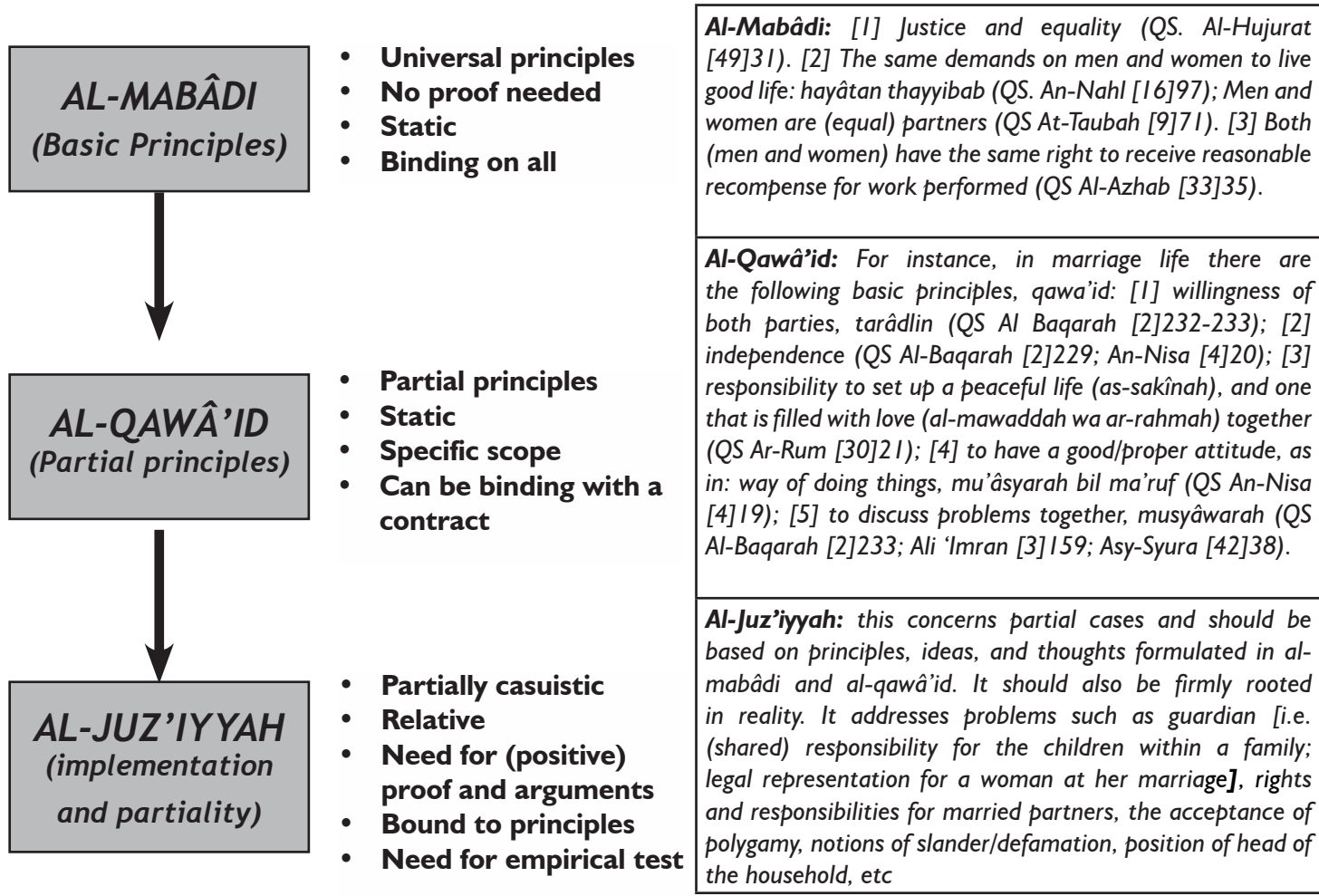


Illustration 12:  
Characteristics and function of Fiqh



**Illustration 13:**

Method for formulating fiqh that guarantees greater justice for women



إِذَا اسْتَأْذَنَ نِسَاؤُكُمْ بِاللَّيْلِ إِلَى الْمَسْجِدِ فَأُذِنُوا لَهُنَّ

*“...and when your wives ask your permission to go to the mosque in the evening, allow it and give them permission...”*

The Prophet’s hadith  
(in: Ibn al-Atsir, juz XI:467, no. 8698).

## **The Construction of Gender In Islamic Legal Thought: STRATEGIES FOR REFORM<sup>1</sup>**

Ziba Mir-Hosseini

**I**n this paper I explore ways in which women can pursue and achieve equality and justice in Islamic law.<sup>2</sup> I argue, first, that conceptions of gender rights in Islamic law are neither unified nor coherent, but competing and contradictory; and secondly, that gender rights as constructed in Islamic jurisprudence (*fiqh*) not only neglect the basic objectives of the shari'a (*maqasid al-shari'a*) but are unsustainable under the conditions prevailing in Muslim societies today.

I begin by examining constructions of gender rights in Islamic legal thought, with a view to identifying both the legal theories and the cultural assumptions that inform them, and I conclude by exploring the kinds of strategies for reform that are now needed both to reflect the spirit of the shari'a and to embody the principle of justice for women. I ask the following questions: if justice and fairness are indisputable objectives of the shari'a, should they not be reflected in laws regulating relations between, and the respective rights of, men and women? Can there be an equal construction of gender rights in Islamic law? If so, what are the strategies needed to achieve it?

Three preliminary notes are necessary: First, throughout the paper I distinguish between shari'a and the science of *fiqh*.<sup>3</sup> The shari'a is, on the one hand, the totality of God's law as revealed to the Prophet Mohammad; on the other, "in its popular usage it indicates the religion of Islam, God's true religion as it embodies revelation in praxis."<sup>4</sup> *Fiqh*, however, is not part of revelation (*wahy*); it is that part of religious science whose aim is to discern and extract shari'a legal rules from the Qur'an and Sunna. Strictly speaking, *fiqh* is a legal science with its own distinct body of legal theories and methodology as developed by *fuqaha* over the course of centuries and in dialogue with other branches of religious and non-religious sciences. In other words, it is the shari'a that is sacred and eternal, not *fiqh*, which is a human science and changing. It

<sup>1</sup> Hawwa: Journal of Women in the Middle East and the Islamic World, Vol 1, No 1, pp. 1-28. Koninklijke Brill NV, Leiden, 2003.

<sup>2</sup> This paper was prepared for the Sisters in Islam Regional Workshop, 'Islamic Family Law and Justice for Muslim Women', 8-10 June 2001, Kuala Lumpur, Malaysia. I am grateful to Zainah Anwar for making my participation in the workshop possible; and to Richard Tapper, Abdolkarim Soroush and Turid Smith Polfus for their comments on an earlier draft of this paper.

<sup>3</sup> For this distinction, see Kamali (1989: 216). For an argument not employing the distinction, see An-Na'im (2000: 33-4).

<sup>4</sup> Sachedina (1999a: 15).

is essential to stress this distinction, since *fiqh* is often mistakenly equated with shari'a, not only in popular Muslim discourses but also in specialist and political discourses, and often with an ideological intent.

Secondly, I start from the premise that gender rights are neither fixed, given, nor absolute. They are, on the contrary, cultural and legal constructs which are asserted, negotiated and subject to change. They are produced in response to lived realities, in response to power relations in the family and society, by those who want either to retain or to change the present situation. They exist in and through the ways in which we think and talk (both publicly and privately), and study and write about them.<sup>5</sup>

Finally, I do not aim to do what a Muslim jurist (*faqih*) does, that is, to extract rules from sacred sources by adhering to *usul-al fiqh* theories and methodologies. Rather, I approach *fiqh* rules and their underlying theories from a critical feminist perspective, examining their validity in the light of contemporary gender theories and realities. My questions and assumptions are, thus, different from those of the majority of male jurists. Not only do I expose the inherent gender bias of *fiqh* rules and their inner contradictions but I ask whether these rules reflect the justice of the shari'a and the interests of Muslim individuals and societies. In so doing, I highlight what Sachedina calls 'a crisis of epistemology in traditionalist evaluation of Islamic legal heritage'.<sup>6</sup> At the root of this crisis lies a non-historical approach to Islamic legal systems and a male-centred religious epistemology.

### Gender Rights and Islamic Legal Thought

Broadly speaking, Islamic legal thought contains three distinct discourses on gender rights. While the first two are premised on various forms of inequality between the sexes, the third argues for equality. The first, which is the discourse of classical *fiqh* texts, I call Traditionalist. The second, which developed in the early years of the twentieth century and is reflected in modern legal codes in Muslim countries, I call Neo-Traditionalist.<sup>7</sup> The third, which I call Reformist, emerged in the last two decades and is still in the process of formation.

### The Traditionalist Discourse: Genesis of Gender Inequality

In classical *fiqh* texts, gender inequality is taken for granted, a priori, as a principle. It reflects the world in which the authors of these texts lived, a world in which inequality between men and women was the natural order of things, the only known way to regulate the relations between them. It is a world in which biology is destiny, and there

<sup>5</sup> Mir-Hosseini (1999:6)

<sup>6</sup> Sachedina (1999a: 25).

<sup>7</sup> In the literature which deals with the codification of Islamic law, this discourse is commonly referred to as Modernist. For instance, see Anderson (1959); Coulson & Hinchcliffe (1978).

is no overlap between gender roles: a woman is created to bear and rear children; in the divine plan, this is her primary role and most important contribution to society. It is a world of duties where the very notion of 'women's rights'- as we mean it today - has no place and little relevance.<sup>8</sup>

It is this metaphysical and philosophical world-view that informs classical jurists' understandings and readings of the sacred texts of Islam: the Qur'an and the Sunna. In classical fiqh texts women are depicted as sexual beings not as social beings, and their rights are discussed only in the context of family law. The classical fiqh notion of women's rights is nowhere more evident than in the definition of the marriage contract, which treats women as semi-slaves. One can say that the disparity between men's and women's rights in Muslim societies was - and still is - sustained largely through the rules that classical jurists devised for regulating the formation and termination of the marriage contract. In this respect, there is no major difference among the various fiqh schools: all share the same inner logic and conception of the family. If they differ it is in the way and the extent to which this conception is translated into legal rules.<sup>9</sup>

Yet the fukahā's construction of women's rights is not free of logical contradictions, which are again nowhere more evident than in the marriage contract, as we shall see. Two competing voices can be detected, the one inspired by revelation (wahy) and the other constrained by the social order. While the first is an egalitarian voice, reflecting the justice of Islam, the second is a patriarchal voice, reflecting social, cultural and political expediencies. The further fiqh texts are removed from the time and the spirit of revelation, the stronger becomes their patriarchal voice.

To examine this tension - between the voice of revelation and the voice of social order - and to identify the guiding assumptions of the classical jurists, let us examine the salient features of the marriage contract.

### **Marriage as Contract of Exchange**

Classical fiqh texts define marriage (nikah) as a contract of exchange with fixed terms and uniform legal effect. Patterned after the contract of sale (bay'), the essential components of nikah are: the offer (ijab) by the woman or her guardian (wali), the acceptance (qabul) by the man, and the payment of dower (mahr), a sum of money or any valuable that the husband pays or undertakes to pay to the bride before or after consummation. A woman has the right to refuse sexual access until she receives her mahr in full.<sup>10</sup> In the Maliki school, the importance of the exchange implied by the payment of mahr is such that its suppression, or any condition set in the contract that might lead to its

<sup>8</sup> It is this world that most of the Islamist movements that emerged in the second part of the twentieth century sought to recreate. See, for instance, Sharabi (1988).

<sup>9</sup> For differences among the fiqh schools, see Esposito (1982), Maghniyyah (1997).

<sup>10</sup> But once she has given her consent to have sexual relations with the husband she can no longer refuse him.

obliteration, can render the marriage contract void. In other schools, the absence of a specified mahr does not void the contract but entitles the bride to a special type of mahr known as mahr al-mithl, the average dower.<sup>11</sup>

In discussing the legal structure of marriage, classical jurists often employed the analogy of the contract of sale, and drew on its legal logic. For instance, Shaykh Khalil, the most prominent Maliki jurist, writes:

Dower is analogous to sale price, that is, dower comprises the same fundamental conditions as those attached to sale. When a woman marries, she sells a part of her person. In the market one buys merchandise, in marriage the husband buys the genital arvum mulieris. As in any other bargain and sale, only useful and ritually clean objects may be given in dower. For example, a slave may be given as a dower, and the bride, not the bridegroom, has the choice of the slave.<sup>12</sup>

Such a conception of marriage is shared by jurists in other schools. This is how marriage is discussed in the Persian translation of one of the key texts of Muhaqqiq al-Hilli, the most prominent Shi'a jurist:

[M]arriage etymologically is uniting one thing with another thing; it is also said to mean coitus and to mean sexual intercourse. In shar', there have been various interpretations of it. It has been said that it is a contract whose object is that of dominion over the vagina, without the right of its possession. It has also been said that it is a verbal contract that first establishes the right to sexual intercourse, that is to say: it is not like buying a female slave when the man acquires the right of intercourse as a consequence of the possession of the slave.<sup>13</sup>

By saying that the contracts of marriage and sale share a similar legal structure, I do not mean to suggest that fiqh does conceptualize marriage as a sale. Classical jurists show themselves aware of possible misunderstanding and are careful to stress that marriage resembles sale only in form, not in spirit. Perhaps it is their awareness and sense of unease that led fuqaha to enumerate the ways in which the marriage contract differs from that of sale. Even in statements such as those quoted above, it is clear that a distinction is made between the right of access to the woman's sexual and reproductive faculties (which her husband acquires) and the right over her person (which he does not). Such a distinction, as we shall see, has important implications for the rights and duties that marriage entails. What I want to suggest, rather, is that the logic of sale underlies the fiqh conception of women's rights, in which a woman's sexuality, if not she herself, is treated as a commodity - as an object of exchange in marriage.

In any fiqh text, the chapter on marriage starts with a discussion of its religious

<sup>11</sup> See 'Mahr', in Gibb & Kramers (1961: 315), Maghniyyah (1997: 74).

<sup>12</sup> Ruxton (1916: 106). Jorjani, another Maliki jurist, defines marriage in the following terms: "a contract through which the husband acquires exclusive rights over the sexual organs of woman". Quoted by Pesle (1936: 20).

<sup>13</sup> Hilli (1985: 428).

merits, and a list of religious duties and moral injunctions that are incumbent on each spouse. Yet, as we shall see, when it comes to the domain of legal rules these moral injunctions are overshadowed by those elements of the contract that concern the exchange. The boundaries between moral and legal obligations in marriage are hazy and at times arbitrary. What separates the moral from the legal is determined by the 'purpose of marriage'. Here the jurists generally agree that the primary purposes of marriage are the gratification of sexual needs and procreation.<sup>14</sup> Whatever serves or follows from the purposes of the nikah contract falls within the range of compulsory duties incumbent on both spouses - referred to as ahkam al-zawaj. The rest, though still morally incumbent, remain legally unenforceable and are left to the conscience of individuals.

With the marriage contract, a woman comes under her husband's 'isma. 'Isma can be translated as authority, control and protection: for each party it entails a set of defined rights and obligations, some with moral sanction and others with legal force. Those with legal force revolve around the twin themes of sexual access and compensation, embodied in the concepts of tamkin and nafaqa. Tamkin - submission, defined as unhampered sexual access - is a man's right and thus a woman's duty; whereas nafaqa - maintenance, defined as shelter, food and clothing - is a woman's right and a man's duty. A woman becomes entitled to nafaqa only after consummation of the marriage, and she loses her claim if she is in a state of nushuz (disobedience). Nushuz literally means 'rebellion' and it implies the abandonment of marital duties; although it is acknowledged that such abandonment can take place on the part of either spouse, in fiqh sources the term nashiza (rebellious) is used only in the feminine form and in relation to maintenance rights.

In line with the logic of the contract, a man can enter more than one marriage (up to four) at a time,<sup>15</sup> and can terminate each contract at will: no grounds are needed, nor are the wife's consent nor her presence required. Legally speaking, talaq or repudiation of the wife is a unilateral act (iqa'), which acquires legal effect by the declaration of the husband. Likewise, a woman cannot be released without her husband's consent, although she can secure her release through offering him inducements, by means of khul', often referred to as 'divorce by mutual consent'. As defined by the classical jurists, khul' is a separation claimed by the wife as a result of her extreme 'reluctance' (ikrah) towards her husband, and the essential element is the payment of compensation ('awad) to the husband in return for her release. This can be the dower, or any other form of compensation. Here we see the logic of sale at work. Unlike talaq, khul' is not a unilateral but a bilateral act, as it cannot take legal effect without the consent of the husband.

<sup>14</sup> For a discussion, see 'Abd Al 'Ati (1997).

<sup>15</sup> In Shi'a law a man may contract as many temporary marriages (mut'a) as he desires or can afford. For this of form of marriage, see Haeri (1989).

If she fails to secure his consent, then her only recourse is the intervention of the court and the judge's power either to compel the husband to pronounce talaq or to pronounce it on his behalf. Known in classical fiqh as tafriq or tatliq, this outlet became the common juristic basis on which a woman can obtain a court divorce in the contemporary Muslim world.<sup>16</sup> The facility with which women can obtain such a divorce, and the grounds on which they can do so, vary in different fiqh schools of Islamic law. The Maliki is the most liberal and grants the widest grounds upon which a woman can initiate divorce proceedings.

This is, in brief, the fiqh notion of marriage, which fuqaha claim to be divinely ordained and rooted in sacred texts. It is this notion that has come to be equated with the shari'a model of family and gender relations. But the questions must be asked: How far does this notion conform with the equity and justice that are among the undisputed objectives of the shari'a? Why and how does fiqh define marriage in such a way that it deprives women of free will and makes them subject to male authority? The questions become even more crucial if we accept - as I do - the sincerity of the fuqaha's claim that they derive their ideal model of gender relations from sacred sources: the Qur'an and the Sunna.

### 'Women's Status' and Fiqh Theories and Assumptions

There are three sets of related answers. The first set is more ideological and has to do with the strong patriarchal ethos that informs the fuqaha's readings of the sacred texts. The second is more epistemological and concerns the ways in which the 'status of women' became fixed in fiqh, and was taken to be the subject matter (mouzu') of ahkam (rulings). The third is more political and has to do with the exclusion of women from the production of religious knowledge and their inability to have their voices heard and their interests reflected in law. The argument of this section is that classical jurists, by means of the legal and social theories that they developed - all rooted in the cultural and social fabric of their time and society - made gender rights a fixed notion in fiqh.

The fiqh model of gender relations is grounded in the patriarchal ideology of pre-Islamic Arabia, which continued into the Islamic era, though in a modified form. There is an extensive debate on this in the literature, which I will not enter here.<sup>17</sup> Suffice it to say that the fiqh notion of gender relations, as embodied in nikah, is rooted in a type of marriage agreement predominant in pre-Islamic Arabia. Known as 'marriage

<sup>16</sup> Among modern states where Islamic law forms the basis of family law, in Tunisia women enjoy the easiest access to divorce in law. See Nasir (1990:125-42). For reforms in divorce laws, see Anderson (1976), Mahmood (1972), El Alami & Hinchcliffe (1996).

<sup>17</sup> Some argue that the advent of Islam weakened the patriarchal structures of Arabian society (Esposito 1982), others that it reinforced them (Ahmed 1992, Mernissi 1991). The latter also maintain that, before the advent of Islam, society was undergoing a transition from matrilineality to patrilineality, that Islam facilitated this by giving patriarchy the seal of approval; and that the Qur'anic injunctions on marriage, divorce, inheritance, and whatever relates to women both reflect and affirm such a transition. Both base their conclusions on the work of William Robertson Smith. For concise accounts of the debate, see Smith (1985), Spellberg (1991).

of dominion', this agreement closely resembled a sale through which a woman became the property of her husband. As Esposito notes, it "produced a situation in which a woman was subjugated by males, her father, brother or close male relatives when she was virgin and her husband when she became a wife. As a matter of custom, she came to be regarded as little more than a piece of property."<sup>18</sup>

This subjugation is condemned in the Qur'an. Yet it is reproduced in fiqh, though in modified terms. What fuqaha did was to redefine the pre-Islamic 'marriage of dominion' so as to accommodate the Qur'anic reforms and to enhance women's status within it. They made women parties to, not subjects of, the contract, and the recipients of mahr. Likewise, by modifying polygamy and divorce regulations, they curtailed men's scope of dominion over women in the contract, without altering the essence of the contract or freeing women from the authority of men - whether husbands or fathers. Fathers or guardians retained the right to contract the marriages of their daughters or female wards. While some schools give a woman the option to annul a contract involving her after she reaches puberty, in others the wali is invested with the power of jabr, that is, he can force his daughter or ward into a marriage without her consent. This points to another contradiction and a flaw in the juristic logic. On the one hand, jurists themselves define nikah in such a way that it is the woman who makes the offer (ijab) of marriage; on the other hand, by recognizing jabr, they deny a woman free will and treat her as a slave, which goes against the very grain of their own definition of marriage. Above all, here the jurists clearly negate the very spirit of the Qur'anic reforms aimed at abolishing the practice of coercing women into unwanted marriages in the pre-Islamic era.

In producing these rulings, fuqaha based their theological arguments on a number of philosophical, metaphysical, social and legal assumptions and theories. The philosophical/metaphysical thesis that underlies nikah and other fiqh rulings on gender rights is that "women are created of and for men". While this thesis cannot be supported by sacred texts - as Riffat Hassan, Fatima Mernissi and Amina Wadud have shown<sup>19</sup> - it became and continues to remain the main implicit theological assumption for fuqaha in discerning legal rules from sacred texts. The moral and social rationale for this subjugation is found in the theory of difference in male and female sexuality, which goes as follows: God gave women greater sexual desire than men, but this is mitigated by two factors, men's gheirat (sexual honour and jealousy) and women's haya (modesty, shyness). What is concluded from this theory by both Shi'a and Sunni jurists is that women's sexuality, if left uncontrolled by men, runs havoc, and is a real threat to social order. Women's haya and men's gheirat are innate tools of this control. So it is for the good of family and society, and in the name of religion, that women

<sup>18</sup> Esposito (1982: 14-15).

<sup>19</sup> Hassan (1987) Mernissi (1991), Wadud (1999).

are subjugated to men.<sup>20</sup> Fatna Sabbah provides vivid accounts of the working of this theory in medieval legal and erotic texts, and Fatima Mernissi shows how it continues to dominate women's lives in contemporary Muslim societies.<sup>21</sup> The sale contract, as already discussed, provides the juristic basis for women's subjugation in marriage.

I am not suggesting that there was a conspiracy among classical jurists to undermine women, or that they deliberately sought to ignore the voice of revelation (wahy). Rather I argue that, in their understanding of sacred texts, these jurists were guided by their outlook, and in discerning the terms of the shari'a, they were constrained by a set of legal and gender assumptions and theories that reflected the state of knowledge and normative values of their time. These theories, which are the product of either juristic speculations or social norms, continued to be treated by subsequent generation of jurists as though they were immutable, and part of the shari'a.

The marriage contract betrays the dilemma, the unease, of the classical jurists in fusing social norms with Qur'anic ideals. On the one hand, they could not apply to marriage the logic and rules of sale, as it went against the very voice of wahy by denying women's humanity. On the other hand, they could not free themselves from the logic of the sale contract in determining the legal effects of marriage - ahkam al-zawaj. Perhaps that is why they defined marriage as a religious duty, thus elevating it to the level of 'ibadat (ritual/spiritual act). Nikah is one of the very few contracts in fiqh that crosses the boundary between 'ibadat and mu'amilat (social/private contracts). Though fuqaha often speak of marriage as an act of worship ('ibadat), they deal with its legal form under the category of mu'amilat. This is important because, unlike rulings in the realm of 'ibadat - which regulate relations between God and humans, where there is limited scope for rationalization and explanation - those in the realm of mu'amalat - which regulate relations between humans - generally remain open, almost without restriction, to rational consideration. Since human affairs are in a state of constant change and evolution, there is thus a need for new interpretations of these rulings in line with the realities of the time. This is the very rationale for ijtihad, which, as Hashim Kamali notes, "in the sense of self-exertion is a method of finding solutions to new issues in light of the guidance of wahy."<sup>22</sup> In other words, while the shari'a sets specific legal rulings in the realm of ibadat, in the realm of mu'amilat its rulings are intended to establish principles and guidelines so as to ensure propriety and fair play.

Moreover, many jurists and scholars of Islam agree that most Qur'anic verses dealing with family and women are not ta'sisi (constitutive), but are either imza'i (endorsed) or islahi (corrective). That is to say, they are not among those Qur'anic rulings that aim to establish a new practice, but among those that aim either to endorse or to correct an existing practice. In other words, marriage, family and women's status

<sup>20</sup> Mir-Hosseini (2003).

<sup>21</sup> Sabbah (1984), Mernissi (1985).

<sup>22</sup> Kamali (1996: 21).

in the Qur'an are treated as human categories and practices that existed in Arabia, that is, as part of 'urf (custom). This means that women's status and gender relations are neither created by shari'a rulings nor divinely ordained and immutable. It also means that shari'a rulings relating to women and the family are not only not immutable but are in need of constant reform if they are to reflect the spirit of wahy and the justice of Islam. Gender is a social and human concept, and like other human concepts, it evolves and changes in response to social and political forces. In the Qur'an, 'women's status' is treated neither as divinely ordained nor as immutable, but as social practice in need of change. Qur'anic verses are strongly critical of women's low status in pre-Islamic Arabia, and bring substantial reforms in the ways in which women were viewed and treated pre-Islamic Arabia. For instance, the practice of female infanticide is condemned, aspects of marriage, divorce and inheritance practices are reformed to give women a greater say and autonomy.<sup>23</sup>

Classical jurists showed their cognizance of this by placing marriage and other rulings related to 'women's status' and gender relations under the category of mu'amilat. But by their scholastic formulations of these rulings, fugaha came to turn what is essentially a time-bound, temporary phenomenon into a judicial principle of permanent validity. This was done, first by assimilating social norms into shari'a ideals, and secondly, by treating any rulings pertaining to 'women's status' as though they belonged to the category of 'ibadat, as immutable and not open to rational arguments and modifications. In this way, 'women's status' and theories and norms underlying gender relations came to be divorced from their social context and historical development, and were assumed to be fixed and unchanging.

To repeat, the reason why 'women's status' and gender relations became fixed matters in fiqh is rooted in the tension between the dictates of wahy and those of social order. The marriage contract - 'aqd al-nikah - is the product of this tension, in which the social order, the voice of patriarchy, outweighs the voice of wahy. It is also this tension that lies at the root of what Sachedina calls: a crisis of epistemology in traditionalist evaluation of Islamic legal heritage.

Islamic law has been regarded as the embodiment of Divine Justice. In order for Muslims to attain that divine scale of justice they must implement these norms of justice in their everyday life. Ironically, the tension felt by the Muslims in the fulfilment of this obligation is the consequence of elevating the historical development of Islamic law to the plane of restricted historicity of juridical prescriptions for everyday life. The Muslim jurists, by exercise of their rational faculty to its utmost degree, recorded their reactions to the experiences of the community: they created, rather than discovered, God's law. What they created

<sup>23</sup> Qur'an, XVI: 58-59. See Esposito (1982: 14-15). There is no consensus on this in the literature: see note 16 for the debate as to whether the Qur'anic reforms weakened or strengthened the patriarchal structures of the time.

was a literary expression of their aspirations, their consensual interests, and their achievements; what they provided for Islamic society was an ideal, a symbol, a conscience, and a principle of order and identity. What did represent a real constraint on their exegetical and legislative activities to respond to the new exigencies were those judicial conventions based on a common inalienable structure designated by Muhammad Arkoun as “logocentricity” of the juridical corpus in Islam (the emphasis added.)<sup>24</sup>

This epistemological crisis prevails in the realm of women’s rights in Islam. Rather than embodying the shari’a ideals, *fiqh* rulings are literal expressions of the classical jurists’ ideal model of family and gender relations, divorced from time and space. This takes us to the third set of reasons for fixing ‘women’s status’ in *fiqh*; that is to say, excluding women from production of religious knowledge. As Sachedina notes:

It is remarkable that even when women transmitters of hadith were admitted in the *‘ilm al-rijal* (“Science dealing with the scrutiny of the reports”) ..., and even when their narratives were recognized as valid documentation for deducing various rulings, they were not participants in the intellectual process that produced the prejudicial rulings encroaching upon the personal status of women. More importantly, the revelatory text, regardless of its being extracted from the Quran or the Sunna, was casuistically extrapolated in order to disprove a woman’s intellectual and emotional capacities to formulate independent decisions that would have been sensitive and more accurate in estimating her radically different life experience.<sup>25</sup>

By the time that the *fiqh* schools emerged, women were already excluded from the interpretative and intellectual process involved in deducing the terms of the shari’a from the sacred sources. There is a consensus among students of gender rights in Islam that the further we move from the time of Revelation, the more women’s voices are marginalized and excluded from the political life of Muslim society.<sup>26</sup> The patriarchal ideology of the time, as reflected in the *fiqh* texts, was so entrenched and so much part of the reality of classical jurists’ life that it left little room for debate and criticism from within. Most women of their time had little difficulty in accepting the *fuqaha*’s rulings, as they reflected the way in which their roles were defined, and more importantly they had no choice but to submit to them. Those women who did not accept these roles could find leeway in *fiqh*, such as the insertion of stipulations in the marriage contract, enabling them to acquire a certain measure of autonomy in marriage.<sup>27</sup> Women with

<sup>24</sup> Sachedina (1999a: 29).

<sup>25</sup> Sachedina (1999b: 149).

<sup>26</sup> See Ahmed (1992: Chapter 4, The Transitional Age).

<sup>27</sup> Here I am concerned with the ideology of Islamic law, not with its practice. It is essential to note that, while at the ideological level the *fuqaha* claim that Islamic law is immutable, at the level of practice, flexibility and adaptability are two salient features of Islamic law, which have enabled it to be meaningful in a variety of cultures and social contexts from the outset. For an insightful discussion of the ways in which women in pre-modern times related to Islamic law, see Sonbol (1996, esp. Introduction); for contemporary examples, see Mir-Hosseini (1993).

property and financial means were certainly in a different situation, which points to another paradox in the fiqh construction of women's rights. While jurists recognize women's autonomy and right of control over their property, when it comes to marriage, they deny women the right of control over their bodies, thus treating them the same as slaves.

With the rise of Western hegemony over the Islamic world and the spread of secular systems of education in the nineteenth century, the ideological hold of fiqh on social reality began to be broken. At the same time, the changed status of women and their increasing participation in the politics of the Muslim world made the fuqaha's conception of 'women's status' increasingly irrelevant to modern realities. All this gradually paved the way for the emergence of new discourses on gender.

### **Neo-Traditionalists: Gender Balance**

The first new discourse emerged in the Muslim world's encounter with Western colonial powers. In this encounter, the 'status of women' became a contested issue, and since then it has remained a battleground between the forces of traditionalism and modernity in the Muslim world.

Though the roots of this discourse can be traced to the nineteenth century, its impact is linked with the emergence in the Muslim world of modern nation-states and the creation of modern legal systems inspired by Western models in the twentieth century. It was during this stage that, in many such nation-states, fiqh legal rules on family and gender rights were selectively reformed, codified and gradually grafted onto a unified legal system.<sup>28</sup> The impetus of reform varied from one country to another. On the whole, one can say that each Muslim country followed one of three paths: abandoning fiqh in all spheres of law and replacing it with Western-inspired codes; retaining and codifying fiqh with respect to personal status law (family, inheritance), while abandoning it in other areas of law; or preserving fiqh as fundamental law and attempting to apply it in all spheres of law. A large majority chose the second path; Turkey was the only country to opt for the first; the third was followed by Gulf countries.<sup>29</sup>

In the process of adaptation, Islamic law changed from being the province of private scholars operating within a particular legal school (mazhab) to that of the legislative assembly of a particular nation-state. The statute books started to take the place of fiqh manuals in regulating the legal status of women in society. This led not only to the creation of a hybrid family law, neither fiqh nor Western, but also a new discourse which is neither traditionalist nor modern. Though commonly subsumed under Modernist Islamic discourses, I suggest that Neo-Traditionalist is a more appropriate term, because this new discourse shares the same notion of gender rights

<sup>28</sup> For a concise discussion of the terms of the marriage contract and their adoption by legal codes in Arab countries, see El Alami (1996).

<sup>29</sup> See Mahmood (1971).

as traditional fiqh; what it does is to enforce it through the machinery of the modern nation-state, which not only infuses the fiqh discourse on gender with a new force and power but gives it a new dynamic. In codifying family law, governments introduced reforms through procedural rules, which in most cases left the substance of the fiqh ruling more or less unchanged.

This discourse is found not only in the legal codes, but in a new type of literature in the twentieth century, which I categorize as 'fiqh-based'. Unlike fiqh texts proper, these texts are neither strictly legal in their reasoning and arguments, nor necessarily produced by fuqaha. Largely written by men - at least until very recently - these texts aim to shed a new light on the 'status of women' in Islam, and to clarify the Islamic laws of marriage and divorce.<sup>30</sup> The authors re-read the sacred texts in search of new solutions - or more precisely, Islamic alternatives - to accommodate women's aspirations for equality, and at the same time to redefine 'women's status'. Despite their variety and diverse cultural origins, what these re-readings have in common is an oppositional stance and a defensive or apologetic tone: oppositional, because their agenda is to resist the advance of the 'Western' values and lifestyles espoused by twentieth-century Muslim states and their secular elites; apologetic, because they attempt to explain and justify the gender biases which they inadvertently reveal by going back to fiqh texts.

Neo-Traditionalist texts also lack the sense of real conviction, the confidence that imbues classical fiqh texts. Their confidence was undermined by the encounter with colonial discourses on women and voices of dissent from within the Muslim world. The authors of these texts, unwilling to accept that the aspiration for gender equality is not just an imported - Western - concept but part of the twentieth-century reality of Muslim women's lives, find themselves in a contradictory position. On the one hand they uphold the fiqh model of family and gender relations, on the other hand they are aware of, and sensitive to, current discussions of gender and criticisms, from both secular and religious women, of the patriarchal biases of fiqh rules. Education and employment, divorce laws and the question of hejab are the main themes through which they address the issue of women's rights and define a range of positions. It is common to find a single text arguing for gender equality on one issue (for example, women's education and employment), but rejecting it on another (for example, divorce).<sup>31</sup>

In their defence of the fiqh notion of gender, Neo-Traditionalist texts have unwittingly come to modify some of the theories and assumptions underlying the fiqh gender discourse. For instance, they take issue with the assumption that "women are created of or for men", contending instead that in the Islamic view women are equal to men in creation, and do not depend on men for attaining perfection, but can attain their perfection independently. Yet they uphold the fiqh model of gender relations, reject

<sup>30</sup> For a discussion of such writings in the Arab world, see Haddad (1998), Stowasser, (1993); for Iran, see Mir-Hosseini (1999); for sample of texts in English, see Chaudhry (1995), Doi (1989), Khan (1995), Maudoodi (1983), Mutahhari (1999), Rahman (1986), Siddiqi (1952).

<sup>31</sup> This is the case with all the texts in English mentioned in the previous footnote.

gender equality and instead put forward the notion of complementarity of gender rights and duties. This notion, premised on a theory of the naturalness of shari'a law, goes as follows: though men and women are created equal and are equal in the eyes of God, the roles assigned to men and women in creation are different, and fiqh rules reflect this difference. Differences in rights and duties do not mean inequality or injustice; if correctly understood, they are the very essence of justice. This is so, they argue, because shari'a rulings reflect not only the Divine blueprint for society, but are also in line with human nature.

This new defence of the fiqh notion of women's rights has, ironically, further accentuated the internal contradictions and anachronisms in fiqh rules. For example, if women's sexual desire is greater than men's and in need of tighter control, and if shari'a laws both reflect Divine Justice and work with, not against, the grain of nature, then how can they allow men but not women to contract more than one marriage at a time? Surely God would not give women greater sexual desire, and then allow men to be the polygamists? Such contradictions eventually led to modifications in the Traditionalist theory of sexuality, to eliminate its conflict with the newly advocated theory of the naturalness of shari'a law. This theory found currency in the twentieth century, and indeed has no precedent in classical fiqh texts.<sup>32</sup>

What is important to note here is that, in arguing for a new notion of marriage and sexuality, Neo-Traditionalist authors do not look to Islamic but to Western sources, namely psychological and sociological studies. Their readings of these sources are quite selective, and they cite as 'scientific evidence' only those that are in line with fiqh definitions of marriage. They are also selective in their usage of fiqh concepts and definitions, and they try to distance themselves from those that are overtly gender biased. There is no allusion to marriage as a contract of exchange patterned on the sale contract, instead the emphasis is on the emotional and moral side of marriage.

To give a flavour, I quote from Ayatollah Murtaza Mutahhari's The System of Women's Rights in Islam, which in my view remains the most eloquent and refined text among those that hold that the concept of gender equality has no place in Islam. This is argued on the basis of shari'a laws reflecting human nature (fitrat). Though the language is different from classical fiqh texts, the male-centred view of creation is the same.

The association of married life rests upon the pillar of spontaneous attachment and has a unique mechanism. Creation has given the key to strengthening it, and also the key to bringing it down and shattering it, into the hand of man. Under the command of creation, every man and woman has a certain disposition and certain

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<sup>32</sup> In the Iranian context, Allameh Tabataba'i, the renowned Shi'a philosopher, was the first to advance this theory in his monumental Qur'anic commentary known as Al-Mizan, written in Arabic between 1954 and 1972. It was developed by his student, Murtaza Mutahhari, who spelled out the ideological dimension and turned it into a new defence of Shari'a laws. See Mir-Hosseini (1999: 23-25).

characteristics, when compared with each other, which cannot be exchanged and are not the same.<sup>33</sup>

Women's sexuality, now defined as passive, is subordinated to that of men.

Nature has devised the ties of husband and wife in such a form that the part of woman is to respond to the love of man. The affection and love of a woman that is genuine and stable can only be that love which is born as a reaction to the affection and admiration of man towards her. So the attachment of the woman to the man is the result of the attachment of the man to the woman and depends upon it. Nature has given the key of love of both sides to the man, the husband. If he loves his wife and is faithful to her, the wife also loves him and remains faithful to him. It is admitted that woman is naturally more faithful than man, and that a woman's unfaithfulness is a reaction to the unfaithfulness of the man.<sup>34</sup>

Having modified the theory of sexuality underlying *fiqh* rules, Mutahhari now gives a new rationalization as to why, in Islamic law, the right of divorce is given to men.

Nature has deposited the key of the natural dissolution of marriage in the custody of man. In other words, it is man who by his own apathy and unfaithfulness towards his wife makes her cold and unfaithful. Conversely, if the indifference begins on the side of the wife, it does not affect the affection of the man, rather, incidentally, it makes the affection more acute.<sup>35</sup>

The logical conclusion to be drawn is that there is no need for any change or reform of the divorce laws, or even in the form of divorce (i.e. *talaq*, repudiation of the wife by the husband).

Sometimes these people ask: "Why does divorce take the form of a release, an emancipation? Surely it should have a judicial form." To answer these people it should be said: "Divorce is a release in the same way that marriage is a state of dominance. If you can possibly do so, change the natural law of seeking a mate in its absoluteness with regard to the male and the female, remove the natural state of marriage from the condition of dominance; if you can, make the role of the male and female sexes in all human beings and animals identical in their relations, and change the law of nature. Then you will be able to rid divorce of its aspect of release and emancipation."<sup>36</sup>

With the rise of political Islam in the second part of the twentieth century, these texts and their gender discourse became closely identified with Islamist movements, whose rallying cry was the 'return to shari'a' as embodied in *fiqh* rulings. Some of the reforms introduced earlier in the century by modernist governments in some Muslim countries

<sup>33</sup> Mutahhari (1991: 297).

<sup>34</sup> Ibid., p. 274.

<sup>35</sup> Ibid., p. 297.

<sup>36</sup> Ibid., p. 298.

were dismantled (for instance in Iran, Algeria and Egypt). Paradoxically, the Islamist attempt to translate fiqh notions of gender into policy became the catalyst for a critique of these notions and a spur to women's increased activism. A growing number of women came to see no contradiction between fighting for equal rights and remaining good Muslims, no inherent or logical link between patriarchy and Islamic ideals. In so doing, they came to free their feminism from the straitjacket of anti-colonial and nationalist discourses.<sup>37</sup>

A new phase began in the politics of gender, which gradually brought home to Muslim women from all walks of life the harsh reality of subjugation to fiqh when applied by the machinery of a modern state. Two crucial elements of this new phase have been that it placed women themselves - rather than the 'status of woman' - at the heart of the battle between forces of traditionalism and modernism, and that a space has been opened where a critique of gender biases in Islamic law and culture can be sustained in ways that were previously impossible.

### **The Reformists: Gender Equality**

At the close of the twentieth century, these developments gave rise to a second discourse which argues for gender equality in Islam on all fronts. This discourse is part of the new, Reformist religious thinking that is consolidating a conception of Islam and modernity as compatible, not opposed, and contends that the human understanding of Islam is flexible, that Islam's tenets can be interpreted to encourage both pluralism and democracy, and that Islam allows change in the face of time, space and experience.<sup>38</sup>

Unlike earlier discourses, the new one sees the gender inequality embedded in fiqh rules not as a manifestation of divine justice, but as a construction by male jurists which goes contrary to the very essence of divine will as revealed in the sacred texts of Islam. Again, in contrast to the other two discourses, the new one sees women's sexuality as defined and regulated by familial and social circumstances, not by nature and divine will. In this way, the new discourse has severed the link, implicit in all fiqh rulings, between constructions of gender rights and theories of sexuality. This can have important epistemological consequences, in the sense that it can remove the issue of sexuality or 'women's status' from the domain of fiqh rulings. If this is taken to its logical conclusion, then it can be argued that some rules that have been hitherto claimed to be 'Islamic', and part of the shari'a, are in fact the views and perceptions of some Muslims, and social practices and norms that are neither sacred nor immutable but human and changing.<sup>39</sup>

It is perhaps too early to say how and when this new discourse on women will

<sup>37</sup> See Mir-Hosseini (1999: 9).

<sup>38</sup> For a sample of the textual genealogy of this thinking, see Kurzman (1998).

<sup>39</sup> For this discourse in Iran, see Mir-Hosseini (1999: Part III).

make its impact and redress the inequalities inherent in orthodox interpretations of Islamic law. Both the new discourse and the reformist movement of which it is a part are still in a formative phase, and their fortunes are tied to political developments all over the Muslim world. But two remarks can be made at this stage.

First, the emerging discourse on women has the potential, in my view, to shift the old and tired debate on 'Women's rights in Islam' onto new ground, to bring about a paradigm shift. This is achieved by severing the existing link between sexuality and gender rights, which underlies the inability of other Islamic discourses to deal with the issue of women's legal rights, despite the growing debate on women's rights. This disconnection can both free the advocates of this discourse from taking a defensive position and enable them to go beyond old *fiqh* wisdoms in search of new questions and new answers.

Secondly, by advocating a brand of feminism that takes Islam as the source of its legitimacy, the new discourse can challenge the hegemony of orthodox interpretations and question the legitimacy of the views of those who until now have spoken in the name of Islam.<sup>40</sup> Such a challenge has been made possible, even inevitable, by Islamists' ideological construction of Islam, and the very methods and sources that Neo-Traditionalists used in their defence and rationalization of *fiqh* constructions of gender rights. By appealing to the believer's logic and reasoning, relying on arguments and sources outside religion, and imposing their vision of Islamic law through the machinery of a modern state, they have inadvertently paved the way for an egalitarian reading of the shari'a.

### **Strategies for Reform**

Before discussing the kinds of strategies needed to achieve an equal construction of gender rights in Islamic law, let me return to the two questions raised earlier: how and why were constructions of gender in Islamic law premised on such a strong notion of inequality that in time they came to by-pass the objectives of the shari'a? Can there be an equal construction of gender rights in Islamic law?

I answered the first question in the context of the Traditionalist discourse, as found in classical *fiqh* texts. The gist of my argument there is that the genesis of gender inequality in Islamic law lies in the inner contradictions between the ideals of the shari'a and the social norms of Muslim cultures. While shari'a ideals call for freedom, justice and equality, Muslim social norms and structures in the formative years of Islamic law impeded their realization. Instead, these social norms were assimilated into *fiqh* rulings through a set of theological, legal and social theories and assumptions such as: 'women are created of and for men', 'marriage as contract of sale', 'women are inferior to men',

<sup>40</sup> There is a growing literature on this; in addition to works mentioned in note 18, see Engineer (1992), Jawad (1998), Al-Hibiri (1997).

'women need to be protected', 'men are guardians and protectors of women', and 'male and female sexuality differ and the latter is dangerous to the social order'. All these either were developed by the fuqaha themselves, or reflected the state of knowledge of the time, or were part of the cultural fabric of society. In this way, the science of fiqh became the prisoner of its own legal theories and assumptions, which in time came to by-pass the Qur'anic call for justice and reform, thus negating the spirit of the shari'a. As the fiqh construction of gender rights was more or less in line with prevalent social norms and values, it remained unchallenged until the twentieth century.

I explored the second question - the possibility of an equal construction of gender in Islamic law - through a discussion of the two new legal discourses that emerged in the twentieth century. The first - the Neo-Traditionalist - succeeded in rounding some of the harsher edges of classical fiqh notions of gender rights, but because of its defensive and ideological construction of Islam it was eventually appropriated by Islamist movements in the second part of the century. The second new discourse, which argues for gender equality in Islamic, emerged in the closing years of the century as part of the new religious thinking, which displays a refreshing pragmatic vigour and a willingness to engage with non-religious perspectives. Its advocates do not reject an idea simply because it is Western, nor do they see Islam as a blueprint with an in-built programme of action for the social, economic, and political problems of the Muslim world. They are thus not only posing a serious challenge to totalitarian conceptions of Islam but carving a space within which equal constructions of gender in Islamic law can be achieved.

It is in the context of this second new discourse that I believe we need to explore strategies for the reform of Islamic law to accommodate women's aspiration for equality and justice in contemporary Muslim societies. The first discourse, in my view, has not only exhausted its potential but has played its historical role. One can speak of two types of strategies: general and specific. While the first takes us into the domain of politics, conceptions of Islam and approaches to the sacred texts, the second pertains to the mechanisms available within Islamic law. Now that the political map of the Muslim world is one of nation-states, and state legislation rather than fiqh texts define what Islamic law is, the two types of strategies are necessarily intertwined.

In my view, instead of the search for an Islamic genealogy for feminism or human rights - the main concern of those who operated within the first discourse - we need to move beyond such a quest by placing the emphasis on understandings of religion, and how religious knowledge is produced. In this respect, the works of the new wave of Muslim intellectuals, such as Abdolkarim Soroush, can be of immense importance and relevance. Soroush makes a distinction between religion (din) and religious knowledge (ma'refat-e dini), arguing that whereas the first is sacred and immutable, the second is human and evolves in time as a result of forces external to religion itself. Soroush's interpretative-epistemological theory of the evolution of religious knowledge - known

as 'The Contraction and Expansion of Shari'a' - makes it possible to reconcile faith with rationality, to be a Muslim in the modern world.<sup>41</sup> In his words:

Our understanding of revealed texts is contingent upon the knowledge already set around us; that is to say that forces external to Revelation drag our interpretation and understanding of it in various directions ... Believers generally conceive of religion as something holy or sacred, something constant. You cannot talk about change or evolution of religious knowledge. They stick to the idea of fixity. But as I have demonstrated in my work, we have to make a distinction between religion on the one side and religious interpretation on the other. By religion here I mean not faith which is the subjective part of religion but the objective side which is the revealed text. This is constant, whereas our interpretations of that text are subject to evolution. The idea is not that religious texts can be changed but rather over time interpretations will change.

We are always immersed in an ocean of interpretations. The text does not speak to you. You have to make it speak by asking questions of it. Suppose that you are in the presence of a learned man but you do not ask him any questions and he stays silent. You are obviously not going to benefit from his knowledge. If you do ask him questions, you will draw knowledge according to the level of your questions. If the questions are learned, the answers will also be profound. Therefore, interpretation depends on us. A layman's interpretation is bound to be different from a philosopher's understanding. Revelation does not show us its secrets by speaking to us directly. We have to go and excavate those and find the jewels that are there. All we gain and get from religion is interpretation.<sup>42</sup>

Such an approach to religious texts can in time open the way for radical and positive changes in Islamic law to accommodate concepts such as gender equality and human rights.<sup>43</sup> Whether this will ever happen, and whether these concepts will ever be reflected in state legislation, depends on the balance of power between Traditionalists and Reformists in each Muslim country, and on women's ability to organize and participate in the political process, and to engage with the advocates of each discourse.

But it is important to remember two things. First, *fiqh* is reactive, in the sense that it reacts to social realities, to the situation on the ground, and that it has both the potential and the legal mechanisms to deal with women's demand for equality in law. Here I present a selection of legal mechanisms which have successfully been used:

- Insertion of stipulations in the marriage contract to place a woman in a better

<sup>41</sup> For summaries of this theory in English, see Soroush (1998, 2000).

<sup>42</sup> Soroush (1996).

<sup>43</sup> Although Soroush himself, in line with many other religious intellectuals in Iran, does not subscribe to the gender equality perspective, his ideas have not only laid the foundation of what became later known in Iran (following President Muhammad Khatami's election in 1997) as the reform movement, but have enabled religious women like those in *Zanan* magazine to reconcile their faith with their feminism. For Soroush's ideas on gender and my debate with him, see Mir-Hosseini (1999: Chapter 7).

negotiating situation if her marriage breaks down. For instance, the right to choose the place of residence (which gives her freedom of movement and enables her to continue to demand nafaqa after leaving the marital home), the right to study and work (which frees her from her husband's consent), the delegated right to divorce (this can be conditional, for example on the husband taking a second wife, or unconditional). But, as I have argued elsewhere, such stipulations in the marriage contract can be effective only if they are compulsory, that is, if they are automatically inserted in every marriage contract by the state, and only if they are unconditional. Insertion of stipulations has been used in Iran as a means of enlarging women's access to divorce both in pre- and post-revolutionary times.<sup>44</sup>

- Redefining the boundary between the moral and legal rights in marriage so as to expand the wife's rights and limit the husband's arbitrary power. For instance, the concept of 'usur va haraj or zarar - that is, hardship or harm - can be defined so as to give a woman better access to divorce. Iran and Egypt are among the countries that have expanded the grounds upon which a woman can obtain a court divorce.
- Invoking Qur'anic verses or usul-al-fiqh arguments for change. An example of the first is the most recent divorce law in Egypt which enables a woman to obtain a khul' divorce without her husband's consent if she renounces all her financial rights and if she returns the mahr. Surat al-Baqara (2: 229) is quoted to prove the validity of the law. An example of the second is the kind of argument promoted by supporters of 'dynamic fiqh' in Iran in response to women's demand for equal rights. One of them is: when there is change in the subject (mouzu') of a shari'a ruling (hukm), either internally or externally, naturally there will be a need for a different ruling. This argument was advanced in 1988, when Ayatollah Khomeini made the purchase and sale of chess sets halal, as usage had changed. It was forbidden, it was argued, when chess was used for gambling, whereas now, according to expert evidence, chess is a game, a mental exercise. In other words, the rule that chess used for gambling is forbidden has not changed; what has changed is the subject of the rule, i.e. the usage of chess, which necessitated a new ruling which makes chess licit. This is a form of tanqih al-manat, which technically means 'connecting the new cause to the original cause by eliminating the discrepancy between them'.<sup>45</sup> The same logic can be applied to bring about new rulings relating to women, as the link between 'illah and hukum in many rulings needs to be re-examined in the light of changes that have occurred in modern times with respect to women's status in society and gender relations.

Secondly, fiqh is still the monopoly of male scholars, whose knowledge of women comes from texts and manuals, all written by men, all constructed with juristic logic, reflecting

<sup>44</sup> See Mir-Hosseini (forthcoming)

<sup>45</sup> Literally, tanqih means purifying, manat means cause; it implies that a ruling (hukm) may have more than one cause, and the jurist must identify the proper one. See Kamali (1991: 213).

the realities of another age and a different set of interests. This monopoly must be broken; this can be done only when Muslim women participate in the production of knowledge, when they are able ask new and daring questions.<sup>46</sup> It is then that 'Revelation' can speak to us, and 'show us its secrets'.

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<sup>46</sup> The process has already started, but there is a long way to go for a critical mass. For instance, Ahmed (1992), Al-Hibri (1982), Balars (2002), Hassan (1996), Memissi (1991), Wadud (1999), Mir-Hosseini (1999).

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## Women's Issues in Fiqh: Historical Roots of Islamic Legal Discourse

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**F**iqh, Islamic jurisprudence, is a major discipline in Islamic studies. As a separate discipline it is compatible with other fields of study, such as *Tafsîr* (Qur'an interpretation), *Hadîth* (Muhammad's tradition), *Tasawwuf* (Sufism) *Falsafah* (Philosophy), *Târîkh* (History). Discussing Islamic tenets without involving *fiqh* as one of its main disciplines would be incomplete.

*Fiqh* is based on religious texts, either from the Qur'ân or the *Sunnah*, and its existence has become the basis for Islamic discourse for many centuries. It has developed over time, but became more and more relevant since the period of its first codification, in the second century after *Hijra*. The widespread expansion of Islamic tenets has been influenced more by this discipline than any other. Islam in Indonesia, for example, is mainly characterized by teachings from *fiqh*, combined with elements and knowledge from *tasawuf* (Sufism) or *tarekat* (religious order)<sup>2</sup>.

*Fiqh* is some times defined as 'a science to understand facts from various *sharî'a* laws related to human conduct and gained from detailed verses'.<sup>3</sup> Its development can not be separated from certain inherent factors, such as its proponents, the various groups, and different periods. Other, external factors include social, geographic, political, and cultural conditions. According to Islamic history, *fiqh* developed in the 2nd and 3rd century after *Hijra*, while its earliest beginning can be traced to the period of the Prophet and his Companions, *sahabah*.<sup>4</sup> It is known that the Prophet interpreted religious texts, which would subsequently become an important reference for and source of Islamic laws.

Some regard *fiqh* as being insensitive to women's needs and interests, since so many of its texts emphasize men's roles and their central position in so many aspects of society. Because it is seen as lacking in gender-sensitive issues, or at least not intent

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<sup>2</sup> See some of the earlier studies on the coming of Islam in Nusantara, including: Meursinge: *Handboek van het Mohammedaansche Regt in de Maleische Taal*; Amsterdam (1844); Van den Berg: *Le Hadramaut et les colonies arabes dans l'archipel Indien*; Batavia (1886); Djajadiningrat: *Critische Beschouwing van de Sedjarah Banten*; Leiden (1913); Pijper: *Studien over de Geschiedenis van de Islam in Indonesia 1900-1950*; Leiden (1977).

<sup>3</sup> See Abu Zahrah, *'Ilm Ushûl al-Fiqh*, Cairo (1978):23; other definitions are for example the one given by al-Syirazi, "found and understand syar'i law by ijtihad" (in: *al-Luma' fi Usûl al-Fiqh*; Cairo: Muhammad Ali Shabih [1900]:4; and Abd al-Wahab Khalaf, "a collection of syar'i laws related to human conduct, obtained from detailed verses" (see Wahab Khalaf, *'Ilm Ushûl al-Fiqh*, pp. 25).

<sup>4</sup> Wael Hallaq, *A History of Islamic Legal Theories*, Cambridge University Press (1997): 6-7.

on addressing these, *fiqh* is seen as 'too masculine'. The question we should be asking is whether that is a **true impression in *fiqh* literature**; and if it is true, to find the causes and establish ways to redefine gender interests in contemporary *fiqh*. However, if it is not true we should ask ourselves why there is such a strong impression of (gender-) discrimination in *fiqh*, and why it has become so widely spread in Islamic countries. The article below tries to answer those questions by exploring the development of traditional *fiqh* discourse and the possibility of the deconstruction of *fiqh*.

### ***Fiqh, Fatwâ, Qadlâ' and Qânûn***

The terms *fiqh*, *fatwâ*, *qadlâ'* and *qânûn* are often used in Islamic law, but they have a different definition and function. *Usûl fiqh* too, meaning the 'science of ontological methodology' or epistemology in Islamic jurisprudence: it is the most theoretical level in *fiqh*.

*Fiqh* is most widely used and covers the widest substance. It is a complete Islamic legal structure as **the outcome of the process of *usûl fiqh* (methodology)**. *Fiqh* is very complicated, since it consists of various perspectives. Besides **its central role**, *fiqh* (Islamic contains also **other than legal elements that are not always applicable in reality**, as we can see from the number of amendments found in *fiqh* literature. The amendments could either be made by the imam of the various *madhhab* (schools of thought) in *fiqh*, or others.

*Fiqh* can be regarded as a collection of interpretations of religious texts, yet it still does not have a 100% positive law for certain groups and subjects. The diversity of viewpoints found in *fiqh* reflects the variety of discourse in the Islamic legal field. *Fiqh* has for example never been established as a national legal system in any country. However, throughout its history it has strongly influenced some countries' legal system, although the latter is usually only based on one of the *madhhab fiqh*. Nevertheless, of the various terms to be discussed here *fiqh* is the most general one; *fatâwâ*, *qadlâ'* and *qânûn* are often mentioned in *fiqh* literature, both in classical and contemporary studies.

*Fatwâ* is part of the legal processes taking place in *fiqh* discourse. It is a type of decision that can be used as an assisting 'tool' in a legal case. We can regard it as a reaction of the community, or *mustafti*, to a dispute, or when reality demands the formulation of a *fatwâ*. Since it is a reaction, or response to a problem, a *fatwâ* is only provisional; its content depends highly on the particular part of the specific problem that it addresses. This makes a *fatwâ* partly a reflection of (the needs of-) reality when it is implemented. *Fatwâ* is **not quite part of the theory-building process**, as is *fiqh* in *usûl fiqh*; it is rather part of a direct solution for solving a *mustafti's* problem.

According to research the initial process of formulating *fatwâ* in special text editions was begun in the 13<sup>th</sup> century (or 6<sup>th</sup> century after *Hijra*). The various *madhhab*

*fiqh* started collecting them in different periods. Thus the collection of *fatwâ* by the *madhhab* Hanafi was based on the work of Burhanuddin Ibn Mazza (+1174/570H);<sup>5</sup> the collection used by *madhhab* Maliki is based on the work of the early-16<sup>th</sup> century al-Wansairisi (+1508/914H), and known as '*al-Miyar al-Maghribi*'; while *madhhab* Hanbali based its collection on the work of Ibn Taimiyya ('*Fatâwâ al-Kubra*').<sup>6</sup>

*Qadâ* on the other hand is a legal institution, an Islamic court, and its existence becomes important when an Islamic legal solution is needed to solve a problem in a Muslim community. Compared to *fiqh*, *qadâ* has a much more limited theoretical base. Its strength lies in clearly defining when an act is (or isn't) virtuous, particularly when this is a matter of dispute. It functions rather as a problem-solving tool, and its theoretical basis is not as complicated as *fiqh*. *Qadâ* is also more flexible and dynamic. As a judicial institution, *qadâ*'s existence is generally acknowledged in Islamic history, especially on a government level and in those countries where Islamic law is adopted as its overall judicial system.

*Qânûn*, finally, is a law book. Its existence in Islamic history depends highly on a society's leaders' political will to accept and adhere to one of the *madhhab fiqh* as the basis for a country's overall legal system (state regulations). In modern times, one of the *Qânun* that is formulated and put into practice is *Al-Mudawwanah* in Morocco. Aside from the limitations it has regarding substance, the functioning of a *Qânun* also depends on the wish of a country's authorities to adopt a part, or all of the perspectives as formulated in one of the *madhhab fiqh*. There are fewer sources in literature mentioning *qânun* than there are on *fiqh*.

Discussions on Islamic law are more often dominated by arguments from *fiqh* than from the three other legal fields. It is important to recognize this, so that the study of and the discussions on *fiqh* can be separated from the 'air of sacredness' that sometimes still surrounds it. **It is clear that** *fiqh* is the outcome of thinking (rational processes), yet with a great variety in theory and viewpoints. This makes the discussion and implementation of *fiqh* open for critical interpretation, which might perhaps even lead to the deconstruction of some of the limitations that have developed in the issues it addresses.

### The history of formulating *fiqh*

Research shows that the beginnings of *fiqh* as a separate discipline occurred in the time of the Prophet. At this time it was still strongly influenced by elements from pre-Islamic Arab culture. There are various dispute-settling cases that show a combination of pre-Islamic Arab customary law and the interpretation of Islamic religious texts. Ibn Hazm has pointed this out using the example of a murder case from early Islamic history.

<sup>5</sup> In: *Dzakhirat al-Burhâniyyah*.

<sup>6</sup> More detailed information regarding *fatawa* is found in Ibnu Taimiyah, *Minhajul Abidin*, Part III: 267.

He has demonstrated that in the case when a murdered body was found in the area belonging to a specific tribe, 50 members of that tribe had to be gathered and were made to solemnly swear that they did not take part in the act or even knew the cause for the murder. If there were less than 50 members of the tribe present, they had to swear more than once, so that the number of 50 vows was fulfilled. This model is known as pre-Islamic customary law, and it is known that the Prophet himself has acted as a judge in such a case.<sup>7</sup>

To regard Arab customary law as being valid, as long as it did not go against or contradict the Qur'ân, was formally implemented for the first time during the Companion, *sahabah*, -period. It is said for instance that when Abu Bakr deployed his troops in the conquest of Syria, he sent the following message to his commanders:

*"When you enter the land, kill neither old man nor child... Establish a covenant with every city and the people who receive you, give them your assurances and let them live according to their laws... Those who do not accept you, you are to fight, proceeding carefully in accordance with the ordinances and upright laws transmitted to you from God, at the hands of our Prophet".<sup>8</sup>*

*Fiqh* in early Islamic history was closely linked to existing interpretative traditions. At that time, Islamic discipline and (general) knowledge were closely related. For example, the discipline of interpreting texts from the Qur'ân, *tafsîr*, was closely related with the same discipline on texts from *hadîth*, and the development of *fiqh* as a separate field of study only emerged after the development of *tafsîr*. Similar to *tafsîr*, *fiqh* is also a result of *ijtihâd*, or the process of achieving mutual agreement (between the experts). The foundation of *fiqh* lies in a thorough understanding of Islam's basic principles by the early generation of Islamic leaders. For example, Abu Bakr, who was appointed as the Islamic community's first ruler (after the Prophet had died), implemented the prohibition for drinking alcohol and formulated sanctions for those who disobeyed.<sup>9</sup> This was based on Abu Bakr's understanding of a religious text, and it subsequently became one of the pillars in *fiqh*.

The gradual expansion of Islam over greater areas and the advancements in Islamic sciences were some of the factors that supported *fiqh* to progress further, particularly after the emergence of the various *madhhab* ('schools of thought'). It developed separately from the lexical-textual model that developed in the Islamic heartland in Medina. Developments in other regions, specifically in present-day Iraq and Syria, also greatly contributed to further implementations of Islam, particularly on a more intellectual level, and introducing the Iraqi and Syami schools in *fiqh*. This

<sup>7</sup> Muhammad Ibn Hazm, *Mu'jam al-Fiqh*, 2 vols., Damaskus: Matba'at Jami'at Dimashq 1996, II, 838-839.

<sup>8</sup> Quote from S.P. Brock, "Syriac view of emergent Islam" in G.H.A. Juynboll, (ed), *Studies on the First Century of Islamic Society*, Carbondale: Southern Illinois University press 1982, 12, 200.

<sup>9</sup> Abd al-Ghani Abd al-Wahid al-Jamâili, *al-'Umdah fi al-Ahkâm fi Ma'âlim al-Halal wa al-Harâm*, (ed), Mustafa Ata, Bbeirut: Dar al-Kutub al-Ilmiyya 1986,463.

created variations in *fiqh*.

The emergence of various schools of thought and different perspectives strengthened the idea that the formulations arrived at in *fiqh* were, from its early beginnings, influenced by the *faqîh* (expert of *fiqh*): both from an internal perspective, including factors such as ideology, intellect, and politics, as well as external factors, such as geography, environment, and local social conditions.

### ***Fiqh* schools of thought: the development of the various *madhhab***

*Madhhab fiqh* developed as a consequence of the creative processes that influence problem-solving and *ijtihâd* (to arrive at mutual agreement between the experts). *Fiqh* schools that developed during the early period (*tâbi'în*) produced at least four mainstream *madhhab*, at the time known as Medina,<sup>10</sup> Kufah, Syam, and Basra. Later these became more influenced by the ideas of leading individuals, and were no longer limited to the specific location where it developed.

The various *madhhab* were no longer known as Madinah, Kufah, Syam and Basra, but as Hanafi (referring to the 8<sup>th</sup> century scholar Abu Hanifah; d. 767/150H), Maliki (Malik ibn Anas; d. 795/179H), the 9<sup>th</sup> century Syafî'i (Muhammad Ibn Idris al-Syafî'i; d. 819/204H), and Hambali (Ahmad ibn Hanbal; d. 855/241H).

Sociological, cultural, and political factors were an important part in defining the various *madhhab fiqh*. It should be noted, however, that in the case of the personal involvement of a *madhhab's* leader it was not so much his individual role which became dominant, but rather that of his followers, because they were the ones who most strongly formulated and propagated the views of their intellectual leader (the *madhhab's* proponent). Research has also demonstrated the local and regional differences between the various *madhhab* that emerged during the early Islamic *Sahabah*-period on the one hand, and those which developed later on the other.<sup>11</sup>

The variety that developed in *fiqh* was initially seen to carry positive elements, including ways for formulating solutions to disputes and problem-solving, which were regarded as the outcome of creative thinking, as well as the process of *ijtihad*, or achieving mutual agreement (by Islam's legal experts). It was seen as enriching *fiqh*, both in the sense of attaining progressively higher levels of intellectual discourse, and from an epistemological point of view, further developing *usûl fiqh*.

### ***Fiqh* principles and *maqâshid asy-syari'ah***

An important basic element in *usûl fiqh* is the formulation of several *fiqh* principles, the

<sup>10</sup> On the emergence and development of *fiqh* Madinah and Mecca, see Harald Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*, Leiden: E.J. Brill 2002.

<sup>11</sup> Compare for instance Ahmad Hasan (1988), *The Early Development of Islamic Jurisprudence*: 19, 29; and Joseph Schacht (1984), *An introduction to Islamic law*: 16.

outcome of the process of creative and 'genius' thinking. Despite their many differences the various *madhhab* are thus quite similar in that all of them participated in formulating proper, sound principles for *fiqh*. In *madhhab* Hanafi this was done by Ibn Umaruddin al-Dabusi (d. 478H) in his *Ta'sis al-Nadzar*; for *madhhab* Maliki by Ahmad ibn idris al-Qarafi (d. 684H) in his *Anwar al-Furûq fi Anwa'i al-Furûq*; for *madhhab* Syafi'i by Izzuddin ibn Salam (d. 660H) in his *Qawâ'id al-Ahkâm fi Mashâlih al-Anâm*; and for *madhhab* Hanbali it was Najmuddin al-Tûfi (d. 717H) in his *al-Qawâ'id al-Kubrâ* and *al-Qawâ'id ash-Sughrâ*. It shows how seriously they were concerned with the philosophy used in *fiqh*, regarding it as a set of legal rules that, ideally, support human needs, problem-solving and the quest for justice.

There are at least five leading principles in *fiqh* discourse, defined as follows:

- one's affair is determined by one's intention;
- one avoids harm;
- customs could become law;
- doubt shall not take precedence over faith, and that
- hardship will yield ease.<sup>12</sup>

These principles are deeply philosophical, and provide a strong basis for *fiqh* as a legal institution that is concerned with justice, equality, and respect for human rights.

However, over a period of time during the further development of the various *madhhab fiqh* these five philosophical principles seem to have become less and less important, even more so after the process of *ijtihâd* had stopped. Most unfortunately this gave rise to the development of perspectives that seem rigid, unfriendly, and gender-biased.

The initial implementation of the five basic, highly philosophical principles mentioned above reflects *fiqh's* flexibility, elasticity, and ability to respond as adequately as possibly to the needs of (contemporary-) society. For instance using the principle that 'one's affair is determined by one's intention' one could judge the moral value of an act, i.e. it being 'good', or 'bad', or 'evil' (or somewhere in between), depending on the motives involved. The law here functions as a moral 'tool', to differentiate between 'the right' and 'the wrong'. The principle of 'the custom could become law' is an acknowledgement in *fiqh* that written and non-written conventions or customs in other regions are equally part of an existing set of rules and regulations, which should, ideally, be honoured.

The five philosophies mentioned above are above all compatible with what is known as the principle purpose of law, *maqâsid al-syarî'ah*. In the context of *usûl fiqh*, *maqâsid al-syarî'ah* emphasizes the protection of human rights. Abu Ishaq as-Syatibi has stated firmly that the principle of virtue is one of the basic purposes of law, *sharî'a*,

<sup>12</sup> For details regarding these five principles see Ibrahim al-Misri, *al-Asybah wa al-Nazhâ'ir*, Cairo 1978; Jalaluddin al-Suyuti, *al-Asybah wa an-Nazhâ'ir fi al-Furû'*, Maktaba Dar Ihya' al-Kutub al-'Arbiyya tt. 35-122.

which can be further translated as a way to provide protection. There are five different fields included in this legal protection, in particular a) the protection of religion; b) the protection of one's soul; c) the protection of one's mind; d) the protection of posterity and dignity; e) the protection of wealth and property.<sup>13</sup>

One could say that these five points form a universal protective model, in some regards even more universal than in some non-Islamic legal systems. For example 'protecting the soul' is *fiqh's* concern with and honour for the universal principle of human rights. The principle of 'protecting the mind' implies the freedom to think and develop ideas, thus regarding highly and honouring human reason, or *Fides quaerens intellectum* (*ad-dînu huwa al-'aqlu lâ dîna li man lâ 'aqla lah*). The principle of 'protecting posterity and dignity' is a concern with human dignity, and an acknowledgment of humans as biological and social creatures. The idea of 'protecting wealth and property' is *fiqh's* concern with legal property rights.

### ***Fiqh* between 'das Sein' and 'das Sollen': instances of gender injustice**

When we think about the high moral values and level of correctness formulated in and protected by *sharî'ah*, and the basic principles in *fiqh*, there should be no place for references about gender injustice. However, and unfortunately so, there are many references about women's place in society, women's rights, women's leadership which show very little care for the protection of the needs and interests of women. If there are any rules and regulations mentioned in *fiqh* supporting women's roles and women's (social-) position, these concern only minor rules, difficult to uphold in a male-dominated society. As a consequence one could say that some of the basic ideals of *fiqh* ('*das sollen*') are still unfulfilled. Moreover, it is easy to notice the impression of discrimination in Middle East *fatâwâ* and other legal institutions.

The issue of gender equality can only be found in some of the minor collections of classical *fiqh* literature. Paradoxically this points to the strong concern of *fiqh* for humanity in general, alongside the principles of *Sharia's* purposes and *fiqh's* principles. Although there is a ban for women to be appointed Imam, an opinion that is supported by the majority of *madhhab fiqh*, there are some, like al-Muzanni and Abu Thawr († 240H/874) who would still allow it. It is also supported by al-Tabari, although he formulates a number of restrictions on a woman's role as imam: she may only preside over non-obligatory prayers, and excluding *tarawih*, and it can only occur when there is no man who is able to act like an imam.<sup>14</sup>

Another sensitive matter found in *fiqh* literature concerns the possibility of a woman to get married without the presence of a legal representative or her father. There is a *hadith* saying that:

<sup>13</sup> Asy-Syatibi, *al-Muwafaqat fi Usûl al-Syari'ah*, (ed) Abdullah Darraz, ND; part II, pp 8-9.

<sup>14</sup> See al-San'ani, *Subul al-Salam*, part I, 28-29.

„ ...no woman may conduct the marriage contract of another woman, and no woman can conduct the marriage contract on behalf of her own self... („ ...*lâ tuzawwiju al-mar'atu al-mar'ata wa lâ tuzawwiju al-mar'atu nafsaha...*“, as narrated by Abu Hurairah).

However, according to *madhhab* Hanafi it is definitely permissible that a woman 'who has a clear mind' conducts her own marriage or that of her daughter.<sup>15</sup>

Another example of gender injustice is that a woman, according to the majority of Moslem scholars, is not allowed to be appointed or to act as a judge. For them *dzukûrah*, masculinity, is a prerequisite for becoming a judge. However, Abu Hanifah (d. 150 H), the leader of Kufah, has expressed his disagreement with this and according to him it was perfectly fine when there was a woman judge, although this would be restricted to cases involving disputes about property. However, this opinion is further supported, even strengthened by Ibn Jarir al-Thabari (d. 310 H), according to whom a woman could very well be a judge in an absolute sense, handling any kind of case.<sup>16</sup>

These examples demonstrate that we can find several cases where women's interests are not totally neglected by classical *fiqh*. However these views are not part of the dominant views in *fiqh*, which prevail over marginal ones like the examples mentioned here. Over time, the initially dominant views developed into doctrine, and hence the impression that *fiqh* is strongly gender-biased.

### The path towards reconstruction

Efforts to deconstruct *fiqh* literature and arrive at less gender-biased decisions in *fiqh* can realistically only occur through its epistemology, or *usûl fiqh*. There is, however, a clear idea in *fiqh* known as '*taghayyur al-ahkâm bi-taghyyur al-azmân wa al-amkinah*', meaning "...to change the law depends on changing the people and the place...". This could well serve as a basis for studying and re-interpreting *fiqh* references, which has not been possible in previous periods.

In order to eliminate the impression of gender inequality and injustice in *fiqh*, we need to restore, to re-install the process of *ijtihâd* as it was conducted in the past by classical *fiqh* researchers and scholars, and to eliminate the limitations placed on doing further research. By restoring the spirit of *fiqh* through some of its highly moral and universal principles, and *maqâsid al-sharî'ah* ('the purpose of the law'), *fiqh* might regain its relevance as a proper moral guidance, developing in to a social institution with a strong sense of basic justice - with gender equality as an important part of it.

<sup>15</sup> Ibid, 118-119. The emergence of Hanafiyah viewpoint should be given a note thus, a social constructed *fiqh* found its accurateness. The arising problem is the presence of wali. In Medina where the society is strongly hold the law principles that based on Arabic culture, married is a man prerogative right. That is why woman is forbidden to conduct her own or other marriage. In Kuffah (Iraq) the society is more heterogeneous and local culture is more dominant so that there is a different *fiqh* decision, an adult woman could conduct her own marriage without the presence of wali.

<sup>16</sup> Ibn Rusyd, *Bidayatul Mujtahid*, part II, 344.

On an intellectual level efforts should be directed towards addressing and breaking down the inflexibility of the views from *madhhab fiqh*. The Islamic community in Indonesia, which is generally based on *madhhab* Syafi'i should, ideally, not limit itself to the principles of this *madhhab* only, but to achieve this we need a greater input from *ijtihad*. Firstly Indonesia's problems this day and age are more complex than those of the Moslem communities in the Middle East in earlier times. Secondly the influence of some pre-Islamic socio-cultural elements (including strongly patriarchal factors and misogynist attitudes) is still dominant in classical literature. Therefore, by taking into account other viewpoints besides *madhhab* Syafi'i, *fiqh* in Indonesia will be more able to defend the needs, aspirations, and rights of women, considering also that the number of women in Indonesia is higher than in some other Arab countries. Thirdly, Islamic women living in secular or non-Islamic communities also need jurisprudence that guarantees their rights and their position. What is needed nowadays is no longer the limited, discriminative editions of *fiqh*, but *fiqh* harbouring gender sensitivity and justice.

Only through the critical reading, re-reading and re-interpreting of *fiqh* literature and *usûl fiqh* will it be possible to develop *fiqh* that provides justice for all. The partial discussions by some Muslim scholars who have limited their ideas and opinions to *fiqh*'s major perspectives, 'hiding' as it were alternative views, can be regarded as the main cause for the development of injustice and discrimination in *fiqh*. Initiating a process of making Muslim scholars aware of the serious shortcomings of some of their views is perhaps the most relevant approach. Yet this is problematic, considering the resistance of Muslim scholars to review or analyse critically the *fiqh* they normally use – and have been using for centuries.

In Indonesia, the involvement of the leaders of local *pesantren* (Islamic boarding schools) in formulating *fiqh* that guarantees justice for all has steadily become more and more influential. It is they who are at the frontline of contemporary developments in the *fiqh* discourse. They are also involved in overcoming some of the limitations that often characterize studying Islam in the *pesantren*. Consequently, the scholars and (senior-) staff members of the *pesantren* should be doubly aware. Firstly they have to acknowledge that their efforts to do research and study are easily limited by focusing on Syafi'i literature only; they should, ideally, reject any such limitations imposed on them. Secondly, as they pass on their knowledge to their students, they should – again, ideally – let themselves be guided by the intellectual habit of critical thinking and expressing themselves clearly, also in public. Only then it will be possible to arrive at *fiqh* that is just and gender-sensitive.[].

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا  
وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ ﴿١٣﴾

*“...Hey you people, I have created you from a man and  
a woman, and I made you into different peoples and cultures,  
in order that you learn to understand each other.  
In all truth, the most exalted among you at Allah’s  
side is whoever is most devout...”*  
(QS. Al-Hujurât, 49:13).

# A Woman's Life Cycle According to Fiqh 8

According to the Prophet  
the best man is he who  
treats his wife well





**T**he material presented in this section illustrates *ijtihad*, or agreements between the *ulama fiqh*, or Islamic legal scholars on the laws that concern the various stages in a woman's life cycle, based on some of the arguments that they use as the background for their views.

With this material it becomes possible to get to know the social constraints women have to face, which are different from those usually





### OBJECTIVES

After this session, the participants are able to...

- Understand the *ulama's* viewpoints on a woman's life cycle, which differs from that of a man;
- Understand the arguments used by the *ulama* to apply different legal values to the life cycle of women and men in the context of Islamic law;
- Master the theological arguments, such as interpreting texts from the Koran, the *hadîth*, and *fiqh* on women's rights in the context of daily life.



### POINTS FOR DISCUSSION

- A woman's life cycle and the viewpoints of the *ulama*. This includes: the ways for cleansing one self; *adhân* and *iqâmah*; *awrat*; *jama'ah*; becoming an *imâm*; ways to improve an *imam's* devotion (performance); *salât jum'at*; pure cloth used for ritual purposes); the prayers and rites performed for a burial; *syart hajj*; *ihram*; inheritance rules; *saksi*; *diyat*; role and position within the family; rights and rules for husbands and wives; *waliyy* (legal representation for a marriage); *aqîqah*; *'iddah*; *ihdâd*, and so on.
- Arguments from *fiqh* used by the *ulamâ* on a woman's life cycle;
- Theological arguments;
- Women's private rights, such as *'awrat*, *hayd*, *nifâs*, *khitân*, choosing a (marriage-) partner, sexuality and reproductive health, and so on;
- Women's rights in the domestic sphere, including issues such as head of the family/household, refusing to have sex, pregnancy and refusing to become pregnant, divorce, reproductive health, monogamy, inheritance, *'iddah* (period of obligatory seclusion after a divorce/ death of a husband), and *ihdâd*, earning a salary, weaning, taking care of children and so on;
- Women's rights in the public sphere, including issues such as (becoming) a public figure, being a professional, pursuing a career, being active in the field of economy or education, political participation, acting as a legal witness and so on.



## METHOD

Game, group discussion, a speaker's contribution.



## TOOLS

Sticky cloth, markers, plain paper, cello tape.



## TIME

6½ Hours



## STEPS

*First stage (1½ hours):*

1. Explain to the participants that they will carry out an identification of a woman's and a man's life cycle in relation to *fiqh*, focusing on rules (laws) that are obligatory and must be followed, *versus* the existing prohibitions.
2. Divide the participants in groups of 5.
3. Give each group two sets of differently coloured cards, for instance blue and pink, to use in the meta-plan that they will produce later.
4. [First half of the activity:] Ask the participants to write down the various stages in a woman's life cycle, from birth until death, using a pink (or otherwise coloured) card for each separate stage. Ask them to place the cards in their respective place in the diagram that was provided earlier (**Illustration # 14**). Ask the members of the groups to do the same for a man's life cycle, using the blue cards (or: those of another colour).
5. [Second half of the activity:] Ask the participants to add to their original texts on the pink cards (the ones used for describing a woman's life cycle) the answer to the question: „Which is prohibited, and which is compulsory?“ so that the words PROHIBITED and COMPULSORY appear on each card. (**NB: There should be more cards for this part of the activity**).
6. The same activity is applied to the stages in the life cycle of men.
7. Next the groups are asked to answer the question: „What are the implications of these prohibitions and compulsory activities for a

man or a woman?" and to apply the answer to each separate stage in the life cycles as written down previously. The answers of each group should be written down on a piece of plain paper first, and be presented to the whole group later.

8. The next step is to decide whether in a life cycle of men and women there are different or similar implications for adhering to the rules *vs.* prohibitions. The members of the groups write down on another piece of plain paper the words SIMILAR and DIFFERENT, and subsequently present their findings to the whole group.
9. The facilitator now formulates conclusions for each group's discussion, using gender analysis: this means focusing on the different implications for men and women according to *fiqh*.

***Second stage (1½ hours) – working with the invited speaker:***

10. Based on the conclusions formulated in step #7, the facilitator invites the speaker/expert to explain the *ulamâ fiqh*'s views, which differ considerably, on the life cycles of men and women, and to present the various arguments used by them.
11. The speaker also mentions some of the factors and basic assumptions that have influenced the *ulamâ fiqh* to assign a different legal status to men and women and the stages of their life cycles.
12. To conclude this session try to formulate which views applied in *fiqh* are gender biased, and which ones are non-gender biased.

***Third stage (1½ hours) – Questions-and-answers Round:***

13. The facilitator invites the participants to formulate questions, give comments and suggestions as much as seems necessary on the material presented here.
14. The speaker/expert responds as well as can be to the questions, comments, and suggestions from the participants.

***Fourth stage (2 hours):***

15. In this round the facilitator asks the participants to discuss one particular working paper.

16. The participants are divided in 6 groups. Each group concentrates on a different paper. In the discussions that follow the following questions should be addressed:
  - a. Try to find the basic principles that emphasize justice and gender equality;
  - b. Formulate theological arguments that are non-gender biased, related to the life cycle that is being discussed;
  - c. Complete it with other arguments, both theological and non-theological, preferably from outside the context of the manual and the presented material;
17. Present the result of each groups' work. Ask the members of the other groups to comment and give further suggestions on the presentation;
18. The facilitator emphasizes the arguments that are non-gender bias in connection to the presented life cycle. When there are more arguments that can be used to complete a case, either the facilitator or the speaker/expert may well provide other arguments.



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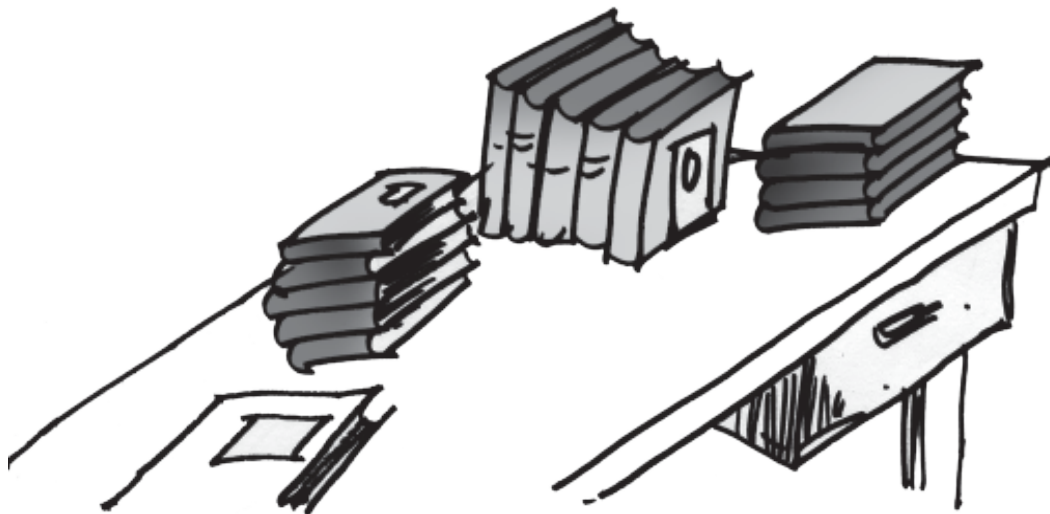
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*Notes for the facilitator / speaker*

- ✓ Prepare papers on cases that are related to a woman's life cycle, on topics such as sexuality, weaning, menstruation and/or post nataly blood (*haid-nifas*), circumcision (*khitan*), *iddah-ihdad* and so on.
- ✓ Emphasize the existence of legal differences between men and women, which result in the fact that women have to face stringent and often severely limiting social constraints.
- ✓ Discuss the strong influence of *hiyal* in fiqh.
- ✓ Try to conclude by searching, finding, and formulating rules/rulings in fiqh that are non-gender biased, and which guarantee justice for men as well as for women.



**Different judgment between men and women  
according to *fiqh***

Topic	Women	Men
<b>Aqiqah:</b>	<ul style="list-style-type: none"> <li>• One goat suffices</li> </ul>	<ul style="list-style-type: none"> <li>• Two goats are required</li> </ul>
<b>Khitan (Circumcision)</b>	<ul style="list-style-type: none"> <li>• Female circumcision involves more or less severe mutilation of women’s sexual organs; depending on (local) cultural traditions, in some societies this is done by cutting off a (small) part of the clitoris, or making a minor incision.</li> <li>• According to some <i>c.q.</i> in some cultures it is considered <b>wajib</b> (obligatory), while elsewhere and according to others it is <b>sunnah</b> (meritorious); some <i>ulama</i> emphasize its ‘high esteem’.</li> <li>• Main aim is to reduce women’s sexual urges, particularly for those who live in a hot region.</li> </ul>	<ul style="list-style-type: none"> <li>• Circumcision for men involves cutting off a small, allegedly useless part of the penis (<i>kulup</i>: foreskin); when retained it is often a source of infections and other diseases.</li> <li>• It is generally regarded as <b>wajib</b>; some <i>ulama</i> use the term ‘<b>sunnah mu’akkadah</b>’.</li> <li>• Main aims are to stimulate a man’s sexual urges, and to avoid getting an infection.</li> </ul>
<b>Taharah (Ritual-) cleansing: Hadats:</b>	<ul style="list-style-type: none"> <li>• When a woman is peed on by a baby girl, she should bathe as she would normally do, and use water.</li> <li>• Women have to clean themselves not only after going to the toilet and after having sex, but also when they are having their menstruation (<i>haid</i>), when they involuntarily lose some blood after giving birth (<i>nifas</i>), and <i>istihadhah</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• When a man is peed on by a baby girl is suffices he sprinkles some water on the affected spot.</li> <li>• Men only need to cleanse themselves after going to the toilet, after having sex, and after losing sperm.</li> </ul>

Topic	Women	Men
<p><b>Shalat:</b>  <b>Adzan</b> and  <b>Iqamah:</b>  <b>Aurat:</b></p> <p><b>Proper posture during shalat:</b></p>	<ul style="list-style-type: none"> <li>• There are periodic and biological periods of abstinence, namely during menstruation.</li> <li>• Only <i>iqamah</i> is considered <i>sunnah</i> (meritorious).</li> <li>• The <i>aurat</i> includes a woman's whole body, except the face and the palms of her hands.</li> <li>• For <i>ruku</i> and <i>sujud</i> one puts the elbows in front of the breasts (covering the breasts). For <i>sujud</i> one hides the lower body area (groin) by clutching one's thighs closely together in front of it.</li> </ul>	<ul style="list-style-type: none"> <li>• There are no prohibitions whatsoever.</li> <li>• Both <i>adzan</i> and <i>iqamah</i> are considered <i>sunnah</i> (meritorious).</li> <li>• The <i>aurat</i> includes only the part of the body between the knees and the navel.</li> <li>• For <i>ruku</i> and <i>sujud</i> it is considered meritorious to put some space between both knees and the stomach.</li> </ul>
<p><b>Jama'ah (Communal praying):</b></p> <p><b>Shalat Jum'at (Friday prayers):</b></p>	<ul style="list-style-type: none"> <li>• Women are not allowed to raise their voice when they join the men to pray.</li> <li>• A woman's voice is part of <i>aurat</i>.</li> <li>• Praying together is <i>sunnah</i> (meritorious); it is better for a woman to pray at home.</li> <li>• Women can only act as an <i>imam</i> for other women, or for younger boys.</li> <li>• In case the <i>imam</i> makes a mistake, women are not allowed to use their voice to correct him (but unobtrusively clap their hands).</li> <li>• The communal Friday prayers are not <i>wajib</i> (compulsory) for women and they do not count for the number of the congregation (<i>juma'ah</i>).</li> <li>• <i>Khutbah</i> (to deliver a sermon) is not allowed for women.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Sunnah</i> (meritorious) to raise their voice at <i>jahriah</i> (evening prayer).</li> <li>• A man's voice is not considered part of <i>aurat</i>.</li> <li>• It is <i>sunnah</i> (meritorious) and better to pray in public, at the mosque or the <i>mushollah</i> (communal prayer house).</li> <li>• Men can act as an <i>imam</i> for anyone.</li> <li>• Men may correct the <i>imam</i>, saying '<i>subhanallah</i>'.</li> <li>• The communal Friday prayers are <i>wajib</i> (compulsory) for men.</li> <li>• <i>Khutbah</i> (to deliver a sermon) is allowed for men.</li> </ul>

Topic	Women	Men
<b>Fasting:</b> ✓ <i>Wajib</i> and <i>sunnah</i>  ✓ <i>Puasa sunnah</i> (meritorious)	<ul style="list-style-type: none"> <li>Fasting for women is limited on biological and periodical grounds: it is not allowed to fast during menstruation or involuntary loss of blood, when weaning and during pregnancy.</li> <li>To conduct <i>puasa sunnah</i> (meritorious/incidental fasting) a married woman needs permission from her husband.</li> </ul>	<ul style="list-style-type: none"> <li>There are no limitations as to why men should not do the fasting.</li> <li>No permission from anyone is needed.</li> </ul>
<b>Jenazah (Proper care of/for a corpse):</b>	<ul style="list-style-type: none"> <li>After a woman has died, the body is wrapped in 5 layers of white cotton material (<i>kain kafan</i>).</li> <li>When a woman performs the obligatory prayers in front of a deceased it does not count for her <i>fardu kifayah</i>.</li> <li>When an <i>imam</i> performs the obligatory prayers for woman who has died, he stands near the hips/stomach of the deceased.</li> <li>It is <i>sunnah</i> to hold a protective sunshade over the corpse of a woman at her burial.</li> <li>Women are not allowed to carry a corpse, even when the deceased was a woman.</li> </ul>	<ul style="list-style-type: none"> <li>After a man has died, the body is wrapped in 3 layers of white cotton material (<i>kain kafan</i>).</li> <li>When a man performs the obligatory prayers in front of a deceased it is regarded as counting for his <i>fardu kifayah</i>.</li> <li>When an <i>imam</i> performs the obligatory prayers for man who has died, he stands near the head of the deceased.</li> <li>It is not <i>sunnah</i> to hold a protective sunshade over the corpse of a man when he is buried.</li> <li>Men are allowed to carry a corpse, even when the deceased was a woman.</li> </ul>
<b>Haji:</b> ✓ <i>Safar haji</i>  ✓ <i>Ihram</i>	<ul style="list-style-type: none"> <li>A woman should be accompanied by a close relative.</li> <li>Women should cover their entire body, except the face and the palms of their hands.</li> </ul>	<ul style="list-style-type: none"> <li>A man does not need to be accompanied by a close relative.</li> <li>It suffices to cover the part of the body from the navel to the knees, and it is prohibited to cover the head.</li> </ul>

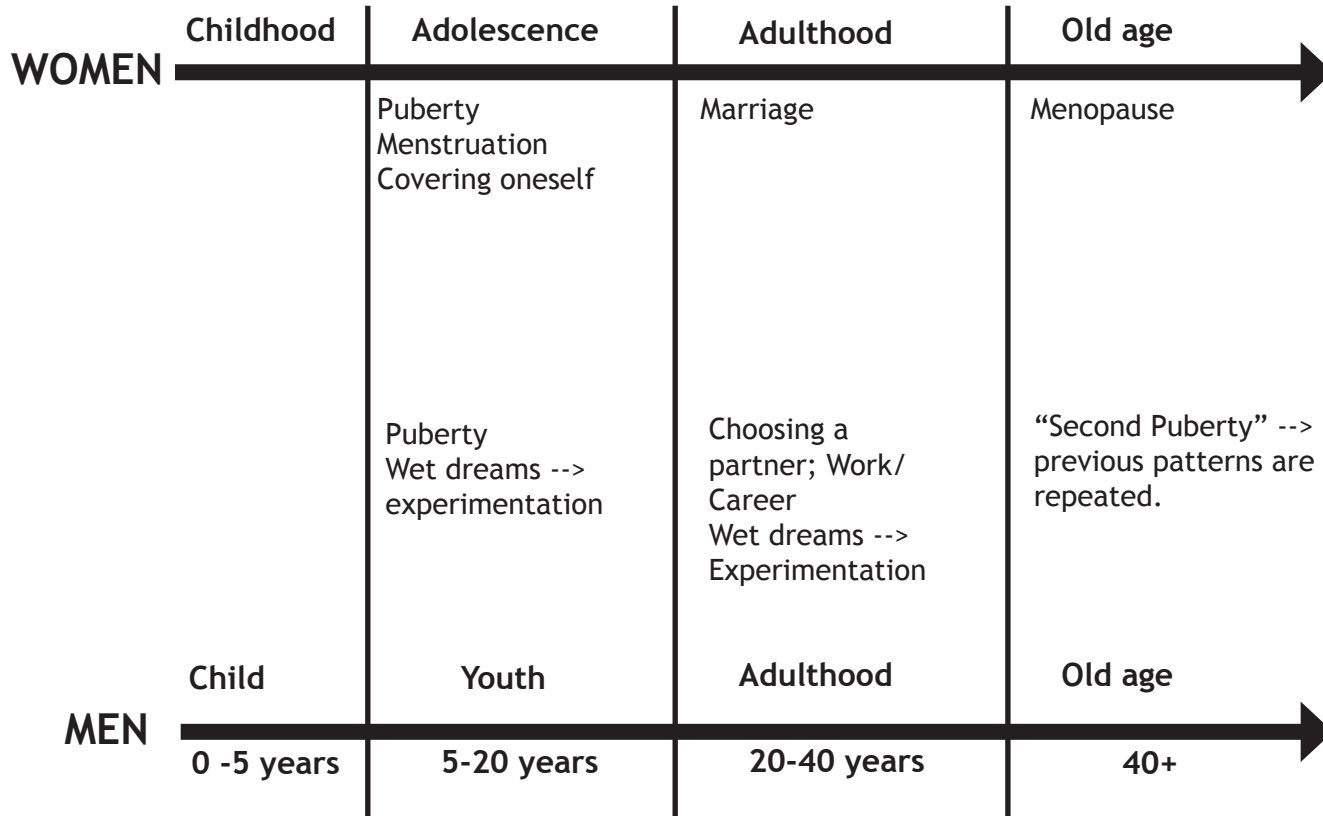
Topic	Women	Men
✓ <b>Thawaf</b>	<ul style="list-style-type: none"> <li>• When a woman is having her period, she is not allowed to perform the obligatory <i>thawaf</i> (circum-ambulation).</li> <li>• Women are not allowed to kiss <i>Hajar Aswad</i> when they perform <i>thawaf</i>.</li> <li>• When women perform <i>thawaf</i>, they should distance themselves from the Ka'bah.</li> <li>• Women should perform <i>thawaf</i> and <i>sa'i</i> in the evening.</li> <li>• Women do not need to <i>raml</i> (to walk with short, quick steps) during <i>sa'i</i>.</li> <li>• It is <i>sunnah</i> for women not to use their voice during <i>takbir`ied</i> and <i>talbiyah</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• Men are always allowed to perform <i>thawaf</i> (circum-ambulation), without any restrictions.</li> <li>• It is <i>sunnah</i> for men to kiss <i>Hajar Aswad</i>.</li> <li>• It is <i>sunnah</i> for men to get nearer and nearer the Ka'bah (<i>baitulllah</i>).</li> <li>• It is <i>sunnah</i> for men to perform <i>thawaf</i> and <i>sa'i</i> at the right moment (<i>afdhal</i>).</li> <li>• It is <i>sunnah</i> for men to perform <i>sa'i</i> using <i>raml</i> (taking short, quick steps).</li> <li>• It is <i>sunnah</i> for men to use their voice during <i>takbir</i> and <i>talbiyah</i>.</li> </ul>
<b>Waris (Inheritance)</b>	<ul style="list-style-type: none"> <li>• For a wife: she has the right to receive <math>\frac{1}{4}</math> (if she has no children), or <math>\frac{1}{8}</math> (if there are one or more children).</li> <li>• For a daughter: she has the right to receive half of the inheritance when there is no son/sons in the family (and she does not have a brother); when she has one or more brothers she has the right to receive <math>\frac{1}{2}</math> of her brother(-s)' part of an inheritance.</li> <li>• The relatives of a woman, known as <i>dzawil arham</i> have no rights whatsoever to receive any parts of an inheritance.</li> </ul>	<ul style="list-style-type: none"> <li>• For a husband: he has the right to receive <math>\frac{1}{2}</math> from a wife (when there are no children) or <math>\frac{1}{4}</math> (when there are children).</li> <li>• For a son: he has the right to receive a part that is twice as much as a daughter (his sister); or, when there are no daughters (when he has no sisters) he has the right to receive the total inheritance (<i>ashabah</i>).</li> <li>• The relatives of a man, known as <i>dzawil arham</i> too, have the right to receive a part of an inheritance.</li> </ul>
<b>Nikah (Marriage)</b>	<ul style="list-style-type: none"> <li>• A woman gets married.</li> <li>• A woman who is getting married needs a male representative to legalize the marriage.</li> <li>• A woman cannot marry off someone else.</li> </ul>	<ul style="list-style-type: none"> <li>• A man marries.</li> <li>• A man who marries does not need a representative.</li> <li>• A man may marry off someone else.</li> </ul>

Topic	Women	Men
	<ul style="list-style-type: none"> <li>• A woman cannot act as a representative, and may not express the marriage vows at the time of the marriage ritual (ijab and qabul).</li> <li>• A woman cannot act as a legal witness to a marriage.</li> <li>• A woman is does not have the duty to provide for another.</li> <li>• It is considered disobedient (nusyuz) when a woman refuses her husband.</li> <li>• When a woman is nusyuz (disobedient) her husband should warn her, he may leave the conjugal bed, he may even slap her.</li>   <li>• An Islamic woman is not allowed to marry a non-Islamic man (even kitabiyah) .</li> <li>• A woman does not have the right to ‘enjoy’ her husband: therefore, when her husband refuses her or does not wish to reveal the part of his body known as aurat she must accept it and have peace with it.</li> </ul>	<ul style="list-style-type: none"> <li>• A man may act as a representative for the various stages in the marriage ritual ijab and qabul).</li> <li>• A man may act as a legal witness in a marriage.</li> <li>• A husband is obliged to provide (for his family).</li> <li>• It is not considered disobedient (nusyuz) when a husband refuses his wife.</li> <li>• A husband’s wishes may not be refused by a wife; unless this concerns something that is ma’siat (immoral) and contradicts syara’ (Canon law).</li> <li>• When a husband is nusyuz (disobedient), his wife may not slap him, but has to accept it.</li> <li>• An Islamic man is allowed to marry a non-Islamic woman (kitabiyah). A husband has the right to ‘enjoy’ his wife: therefore, when his wife refuses him or does not wish to reveal the part of her body known as aurat he may force his will upon her.</li> </ul>
<p><b>Thalak, Thalak-rujuk (Divorce and Re-marriage)</b></p>	<ul style="list-style-type: none"> <li>• A woman can ask for a divorce, as long as she pays ‘iwadh (also known as khulu’), or through the process known as tafwidhu at-thalaq, in which the husband is asked to return the bride-price (talak) to his wife.</li> </ul>	<ul style="list-style-type: none"> <li>• A man can enforce a divorce whenever, wherever, and without any further considerations.</li> </ul>

Topic	Women	Men
	<ul style="list-style-type: none"> <li>• After a divorce, or after a woman's husband has died, she is required to have a period of 'iddah (seclusion), during which she may not (re)marry or even be proposed to.</li> <li>• A wife does not have the right to rujuk (to be reconciled with her husband before a divorce is final).</li> </ul>	<ul style="list-style-type: none"> <li>• After a divorce, or after his wife has died, a man is not required to have a period of 'iddah (seclusion) or ihdad (mourning). He can immediately remarry another woman.</li> <li>• After a divorce the (ex-) husband has the right to reconcile (rujuk) with his (former) wife during the period of 'iddah, even without her consent.</li> </ul>
<b>Jinayah (Acting as a witness)</b>	<ul style="list-style-type: none"> <li>• A woman is not allowed to act as a witness in family law and criminal cases; however if it is unavoidable, a woman's testimony accounts for only ½ of that of a man.</li> <li>• The legal fine (diat) for killing a woman is half that of killing a man, or 50 camels. The fine for inflicting bodily harm is also half of that of a man.</li> <li>• When the judge sentences (had) a woman he can remain seated.</li> </ul>	<ul style="list-style-type: none"> <li>• A man can act as a witness in any case, including family law and criminal cases</li> <li>• The legal fine for killing a man is 100 camels.</li> <li>• When the judge sentences a man he must do this standing up.</li> </ul>
<b>Qodha' (Law Courts)</b>	<ul style="list-style-type: none"> <li>• A woman's testimony is worth only half of that of a man; in most cases 4 women witnesses are needed, compared to 2 men</li> <li>• In a financial case the 2 woman witnesses must be accompanied (supported) by an additional male witness.</li> <li>• A woman is not allowed to act as a qadi (judge in a religious court) or a hakim (judge).</li> </ul>	<ul style="list-style-type: none"> <li>• To act as a witness 2 men suffice.</li> <li>• Men do not need to be accompanied (supported) by an additional woman witness.</li> <li>• A man is allowed to act as a hakim (judge).</li> </ul>

Topic	Women	Men
<b>Jihad (Warfare)</b>	<ul style="list-style-type: none"> <li>In general, in all circumstances, women are not obliged to go to war, because generally women are weak.</li> <li>When a woman is captured during a war, she is regarded to be a slave immediately.</li> </ul>	<ul style="list-style-type: none"> <li>Under certain circumstances men are obliged to go to war, because generally men are strong.</li> <li>When a man is captured in war, there are three possibilities: he will be kept as ransom, he will become a slave, or he will be killed.</li> </ul>
<b>Imamah (To act as imam or khalif)</b>	<ul style="list-style-type: none"> <li>Women are not allowed to act as Imam A'zham (highest religious leader);</li> <li>Women are not allowed to act as, or to become khalifah ([political-] leader of the government).</li> </ul>	<ul style="list-style-type: none"> <li>Men are allowed to become Imam A'zham (highest religious leader);</li> <li>Men are allowed to become khalif ([political-] leader of the government).</li> </ul>

Illustration 14  
*Stages in the life cycles of men and women*



## **Women's Life Cycles: hayd (menstruation), nifâs (post-natality) and istihâdah**

Badriyyah Fayumi

**I**n biological terms menstruation is defined as part of a woman's reproductive cycle. It is a sign that a woman's reproductive organs are functioning well, and signifies a woman's sexual maturity. It confirms that her body produces an ovum, which means that she can get pregnant and give birth. In religious terms this cycle is known as *hayd*.

*Nifâs*, or post-natal, natural bleeding is another part of a woman's normal biological cycle, usually experienced in the days, or weeks after giving birth. The term *nifâs* itself is derived from an Islamic/Arabic word and was later adopted into the Indonesian language.

Other than these two normal cycles we are sometimes confronted with the term *istihâdah*, which refers to usually involuntary and uncontrollable bleedings that occur outside the normal cycle of *hayd* or *nifâs*. *Istihâdah* often signifies an abnormality in a woman's reproductive cycle or the organs associated with it.

In Islam there is special attention paid to *hayd*, *nifâs*, and *istihâdah*, both because there is a general concern regarding women's reproduction and reproductive health, and because a woman's reproduction has various religious implications, for instance concerning the division (categorization) in *mu'âmalah* and *munakâhah*.

The Qur'ân itself does not explain *hayd* very precisely, for it is mainly concerned with the philosophical and theological aspects of Islam. Some of the *hadîth* mention *hayd*, *nifâs* and *istihâdah*, but in these texts they are considered a more 'technical' matter. In *fiqh*, however, these matters - particularly *istihâdah* - are given more detailed explanations, which, to some extent, have led to the development of gender-biased views.

### ***Hayd, nifâs and istihâdah according to the Qur'ân and hadîth***

As becomes clear from some of the texts in the Qur'ân, Islamic views on *hayd* offer perspectives that are different from those of ancient Jewish traditions. According to the

latter, women who were having their period were considered 'dirty', the bringers of disaster, and therefore needed to be isolated from society. They were often made to wait out their menstruation in especially appointed menstrual huts, and were not allowed to eat or be together with their family at mealtimes; in fact they were not allowed to touch any food. People would say they had 'evil eyes', of which one should be wary: their glance could contain disaster. Women who were having their period also had to wear certain ornaments, such as an especially designed bracelet, necklace and headband, and use mascara, a veil, and make-up. People in their environment could thus see that they were having their period. People went through all these efforts mainly to avoid the possible effects of their 'evil eyes'.

Negative theological views like this were contradicted in the Qur'ân, and further clarified in some of the *hadîth*. This becomes clear for instance in the Qur'ânic verse Al Baqarah, 2: 222, which describes that Imam Muslim quoted a group of the Prophet's companions who once inquired about the Jewish men who did not wish to eat or live in the same house as their wives when they had their period:

وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذَى فَأَعْزَلُوا النِّسَاءَ فِي الْمَحِيضِ وَلَا تَقْرُبُوهُنَّ حَتَّىٰ  
يَطْهُرْنَ فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ إِنَّ اللَّهَ يُحِبُّ التَّوَّابِينَ وَيُحِبُّ الْمُتَطَهِّرِينَ

“...They asked you about hayd. Tell them that since hayd (the blood) is filthy keep your distance from your wives, especially from the part where the blood flows out. And do not come near them until they are clean. After they have cleaned themselves, embrace them the way Allah asks you to. Indeed, Allah loves those who ask forgiveness and purify themselves...”

The Prophet himself is quoted as saying: “...Do whatever you like, except having sex...”. After they heard the Prophet say this, the Jews commented and said: “...This man always wants to do things differently from us...”. This was overheard by two of the Prophet's companions. They told the Prophet and asked one more time if it was really alright to be with one's wife when she had her period. Becoming aware of their hesitation, the Prophet looked very stern, and for a moment the two men thought he was going to be angry, but this was not the case. The Prophet was very serious in refuting the Jewish custom to isolate a woman who is menstruating.

In the verse mentioned above the word “اغيض” is expressed twice. There are different opinions among the *mufassir* about its translation. Some say there is a similar meaning both times, i.e. “menstruation”(as it is translated by at-Tabary). But others

have said that the first “الحيض” means “menstruation blood”, while the second “الحيض” means “part where the blood flows out”. Abu Hayyan was among those who supported this latter interpretation.

The use of “الحيض” instead of, for instance “الحائض” (‘a menstruating woman’) has led to broad theological discourse. On the first *الحيض* (يستلونك عن الحيض) the Qur’ân has clarified that it is the blood itself that is considered filthy, not the woman who has her period. Imagine the vast difference in opinion that develops from interpreting *hayd* as “filthy women”: according to the Qur’ân, what is considered filthy is the blood, not the women. This statement makes much better sense and fits common medical assumptions. It has been clarified on more than one occasion by the medical world that menstrual blood is not needed by the body, and that it should therefore be disposed of. Should it stay within the body, it might lead to sickness and disease.

The discussion that developed on the second word, “الحيض”: “فاعتزلوا النساء في الحيض” is very similar. Because it is not the women who need to be isolated, it is the men who have to refrain, *i’tizâl*, from wanting to have sex with their wife; they are required to stay away from the part of the woman’s body from where the *hayd* blood flows out, the vagina, *faraj*, until a woman has finished her period and is clean from her *hayd*. What the outcome of this discussion really demonstrates is that besides trying not to regard women as sexual objects, they should be treated properly.

This view is strengthened in some of the Prophet’s *hadîth*. In many *hadîth* one can find that *hayd* is no reason to discriminate women. According to his wives, the Prophet did all kinds of things together with his wives, also when they were having their period, except having sex. The Prophet bathed with them, and would sleep together with them under the same blanket. This is also what the Prophet told his male companions. The Prophet did not agree with the Jewish men who refused to eat together with a woman who was having her period. The Prophet himself once shared a glass of water with his wife Aishah, when she was having her period, and drank from the same spot on the glass, putting his lips where Aishah had earlier put hers. He also shared a piece of meat with her, taking a bite from the same part where she had just taken a bite. The Prophet even suggested that a woman who has her period could well participate in celebrating the ritual celebration of *Eid* and the prayers for ‘*Id al- Adhâ*, attending the sermons. However at the time this was considered ridiculous, because according to most people (men and women) it was still prohibited for menstruating women to join the crowd for such a celebration.

The Prophet’s exemplary attitudes broke down some of the existing barriers and feelings of embarrassment. He also encouraged his woman companions to further explore *hayd*, *nifâs* and *istihâdah* more deeply, without feeling inhibited. Aishah on one occasion explicitly praised the critical attitudes shown by the Anshari women, who dared to openly discuss some of their physical and other problems concerning reproductive

health with the Prophet; they allegedly did so for the sake of *tafaqquh fiddin* (studying religion). Later the dialogues on women's reproductive health led to the formulation of several separate *hadîth* on *hayd*, *istihâdah* and *nifâs*. There is for instance one whole chapter on these matters in *Al-kutub as-sittah*, and Sunan Ibn Mâjah too spent many pages on it. One could say that in the *hadîth* the subject of *hayd*, *istihâdah* and *nifâs* has received more technical and practical explanations.

Almost all of the regulations concerning *hayd*, *nifâs* and *istihâdah* in the *hadîth* were based on actual cases at the time. The rulings that were formulated for these cases were seen as solutions to particular problems, and the laws concerning them were highly considerate of a woman's condition. Some of the legal solutions concerning women who were suffering from *istihâdah* (the involuntary loss of blood) that were brought forward by the Prophet clearly show his willingness and capacity to listen to women's problems.

Almost all *hadîth* on *hayd*, *nifâs* and *istihâdah* either state explicitly or indicate indirectly that before a certain rule was approved there would have been some form of dialogue between God, transmitted through the Prophet's *hadîth*, and the women involved. Aishah, Ummu Salamah, Fatimah bt. Abi Hubaish, Ummu Habibah bt. Jahsh, Asma binti Umais, and Hamnah bt. Jahsh, *radiyallâhu 'anhunna*, were among some of the Prophet's woman companions who played a significant role in the formulation of some of these *hadîth*. It has also become clear that many of the individual women mentioned here had experienced massive *istihâdah* themselves, and thus spoke from practical experience; others had suffered from it for years, and also felt the urge to discuss their suffering with the Prophet. The Prophet, however, did not give a single answer that was valid for all cases. In very general terms he suggested the women to continue doing their daily prayers, five times a day, just as when they were not experiencing any bleeding. He also encouraged them to take ablution, *wudû* before they began their prayers. In the case of bathing for instance, the Prophet gave his women friends various (and individual) answers. He suggested Ummu Habibah bt. Jahsh to bathe before doing her daily prayers, but he advised Sahlah bt. Suhail and Asma' bt. 'Umais to bathe for every second prayer: one after doing their midday- and afternoon prayers, another one after sunset- and evening prayers, and yet another one shortly after the prayers at dawn. Fatimah bt. Abi Hubaish he advised to take just one bath, after her period had stopped.

Based on data and examples from *hadîth*-literature we can see, firstly, that the Prophet was very careful in considering the individual women's physical condition before passing a ruling. He might have done this so that it was possible, or realistic for them to act according to his rulings. What is also expressed in the literature is that a form of dialogue took place between God (albeit indirectly, only implied in the Prophet's decision) and those who were addressed through the subsequent *taklîf*, i.e. the women

involved. One might conclude, therefore, that the laws on *hayd*, *nifâs* and *istihâdah* in the *hadîth* were realistically formulated, and based on the needs and interests of the *taklîf*'s recipients.

### Views in *fiqh* concerning *hayd*, *nifâs*, and *Istihâdah*

In *fiqh*-literature too *hayd*, *nifâs*, and *istihâdah* have received much attention from the *fuqahâ*. Many books were written exclusively on these subjects, including the collection of works by the Imam Haramain and Abu al-Faraj ad-Darimi (who published a series of books on it).

*Fiqh*'s basic paradigm on these subjects is, generally speaking, a continuation of the decisions and opinions formulated in the Qur'ân and *hadîth*. It has, for instance, never described women who are having their period or those experiencing *istihâdah* and *nifâs* as 'filthy' or in need of being isolated.

*Fiqh* rather sees the status of women who are having their period or who experience other kinds of bleeding as similar to those who are in major *hadath*, a condition that requires a person to take a special bath before performing any religious rituals. This usually involves, for instance, a husband and wife who have just had sex, or a man just after he has ejaculated. According to *fiqh* both a major or a minor *hadath*, i.e. the conditions which require an individual to have ablution before performing a religious ritual, as after urinating or waking up, are considered natural, temporary and accidental. Since everyone experiences these symptoms at one time or another, *hadath* is neither negative nor unnatural. By classifying *hayd*, *nifâs* and *istihâdah* on the same level as other conditions for *hadath*, *fiqh* has actually positioned women's reproductive processes as part of any woman's natural condition, in case a dispute arises and a legal solution is needed.

However, although in *fiqh* *hayd*, *nifâs* and *istihâdah* are seen from a just and natural perspective, there are still many who regard *nifâs* and menstruating women negatively. In his work *Al-Hayawân* Al-Jahidz refers to four types of animals that also experience menstruation; he mentions rabbits, bats, hound dogs – and women. This is a very offensive statement, as if women are 'less human' or 'more animal-like'. Even though it is true that some animals are experiencing menstruation, to classify women together with them is not very human. Another negative statement is expressed by Al Hâwi, who has explained that *hayd* is regarded filthy because the blood has a bad smell, it has a gross colour, it is dirty and it is dangerous. This comment too sounds intrusive and improper, because it fails to explain the more important elements of menstruation, such as its function as part of a woman's normal cycle in reproductive health. As mentioned before: if menstrual blood would not flow out, it would lead to sicknesses and disease for the women, with serious consequences for her ability to carry a healthy pregnancy. Fortunately this latter opinion is not supported by the majority of *ulamâ*.

However, apart from the fairly objective and supportive views held by most *fiqh* experts, there are several complicated legal outcomes from cases in *fiqh* which have made things more difficult for women. With all due respect to the *ulamâ's* efforts in *ijtihâd* (i.e. to arrive at mutual agreement) and in addition to their genuine concern in these matters, paradoxically most of the laws in *fiqh* regarding *hayd*, *nifâs* and *istihâdah* fail to accommodate women's needs and interests.

For instance, according to *fiqh* women who experience *istihâdah* (involuntary, irregular bleeding) are divided into *mubtadi'ah* (experiencing an early stage) and *mu'tadah* (regular occurrences). These two categories are further divided into *mumayyizah* (i.e. when someone is able to tell the difference between the loss of blood as a result of either *hayd* or *istihâdah*) and *ghairu mumayyizah* (when someone cannot tell the difference between the types of bleeding).

Each of these four categories has its own complicated limitations. Seen from a subjective perspective, or a woman's own experience, I would say that knowing one's own monthly cycle of *hayd* is already complicated, and only a limited number of women will be able to be sure to know to which category they belong, based on defining the blood according to its colour, type, and including the beginning and the end of the blood flow. We really need a re-interpretation of the effectiveness of the rules on *istihâdah* in *fiqh*, which are based on the paradigms of *mubtadi'ah - mu'tadah* and *mumayyizah - ghairu mumayyizah*, and ask ourselves how effective these rules are in practice. When they are too complicated to implement them in reality, it would be ironic to try to apply them at all.

Another example that shows these rules' impracticality is the question of the minimum time limit for *hayd*. According to Imam Shafi'i the minimum period for a woman to have her period is a day and a night. There seemed to be no problem with this, until another *ashâb* Shafi'i<sup>1</sup> introduced another complicated explanation. He suggested that when a woman had an 'uneasy' period, it was counted as if she was menstruating and had her *hayd* for one day, but not for one night. In this opinion, the woman's *hayd* was not counted, and therefore she had to repeat (*qadâ*) all of the prayers that she was not obliged to do during the period of her *hayd*. The problem of course is that *hayd* does not easily let itself to be determined by the number of minutes and hours that the blood is flowing, since it usually occurs irregularly and cannot be controlled. Even though this idea was fully recognized by the previous *fuqahâ*, the subsequent outcome of *fiqh* in later times did not sufficiently take the way in which women are affected by the law into consideration.

Another complicated rule concerns the required baths for women who are suffering from *istihâdah* and are categorized as *mustahâdah*. Imam Abu Hanifah, Imam Malik and Imam Ahmad bin Hambal (i.e. the majority of leaders of the *madzhab fiqh*)

<sup>1</sup> An *ulama* from *madzhab* Shafi'i, one of the major 'schools of thought' that have developed in *fiqh*.

required the *mustahâdah* to bathe before performing each of the daily prayers. However, this is a difficult condition for women who live in dry regions (with little water), or who live in a region with a cold climate. In an urban context too this is a difficult and impractical requirement, directly affecting women working outside the household, i.e. in offices, schools, hospitals, markets, etc. It is even difficult for women who do not work in the public sphere, for they are expected to bathe five times a day while they also have to do their chores, to take care of husband, children and others in the household, and themselves, while they are obviously not in a top condition. *Istihâdah* itself is a serious problem, and women experiencing it suffer considerably: it weakens a woman physically, reduces their stamina, puts a halt to their sexual activities, and is in some cases life threatening, when and if it becomes serious. It leads to fear and anxiety, and influences their attitude towards their partner (husband), because it makes it impossible to express some of the (physical) intimacy that exists between a married couple. We should therefore in all earnest look at some of the consequences when the laws for women who experience *istihâdah* are applied: they suffer from a serious, unhealthy condition and are physically, mentally and emotionally not well.

Not all rulings in *fiqh* concerning women, however, are unrealistic or inconsiderate. Although there are laws which do not provide or not provide enough support for women's needs and interests, others are more accommodating. This will become clear when we compare some of the decisions from the various *madhhab fiqh*.

Consider for example the minimum time involved in a woman's *hayd*. According to Iman Shafi'i (*madhhab Shafi'i*) the minimum time for experiencing menstruation is when there is bleeding during the period of one day, while Imam Abu Hanifah has said it is three days - with all the consequences mentioned before. Imam Malik (*madhhab Maliki*) has declared that there is no minimum time for *hayd*, and any bleeding during *hayd*, even if it is only for a minute or so is regarded as *hayd*. This opinion is more realistic for women whose periods are irregular – a condition that holds for most teenagers, some adult women, most women approaching pre-menopause and some of those who use certain forms of contraception.

Another consequence from defining a minimum length of time for *hayd* concerns the 'purified time' in between two *hayd*. *Fiqh* from *madhhab* Shafi'i defines and limits the minimum period of 'purified time' to 15 days – a woman is 'pure' from the end of her menstruation until the next, which is at least 15 days later. However, it means that when any bleeding occurs during this 15-day period, it is seen as *istihâdah*. This, however, makes life difficult for women whose periods are irregular. Fortunately, there are other rulings in *fiqh* that show a greater understanding of this problem. According to Imam Ahmad and Imam Ishaq, who have refused to apply the time limit mentioned previously, a woman's 'purified time' between two *hayd* is based on a natural process. Imam Ishaq has even stated that if it were up to him, he would like to see the 15-day

limit terminated. The legal propositions suggested by these two *imâm* are supported by most *fuqahâ* from *madzhab Maliki*, and it could well be a realistic alternative for women with an irregular period.

Similar problems arise regarding the required baths for women who experience *istihâdah* (*mustahadhah*). *Fiqh Shafi'i*, as formulated by the well-known *fiqh* expert an-Nawawi (*madzhab Shafi'i*) is more supportive to women in comparison to the *imâm* from the three other *madzhab*, who require women to bathe before each prayer. According to this viewpoint a woman who is regarded as *mustahâdah* is only expected to have one required bath after her *hayd* has stopped. If a *mustahâdah's* period lasts for seven days, she is expected to have the required bath on the last (i.e. 7<sup>th</sup>) day of her *hayd*-cycle; *wudhu* is only required before doing *salât fard*. This solution seems much more practical, particularly for women who are suffering from *istihâdah* over a long period of time.

The many variations and different viewpoints, *ikhtilâf* expressed in *fiqh* require us to be cautious in interpreting *fiqh*, with a preference to support the implementation of the more logical (practical) outcomes. Published *fiqh* contains the result of the process of *ijtihâd*, achieving mutual agreement between the various *fuqahâ*, whose views are based on the interpretation of sacred religious texts and practices. We need to continuously select and separate the relevant from the abstract, the realistic from the impractical. *Ijtihâd* itself took place in a specific time and place, i.e. in the period of the *mujtahid* (lawmakers): it is only appropriate that we (re-)consider the implementation of different legal decisions in contemporary society. It is time for women to become more actively involved in every stage of the law-making process, particularly (but not exclusively) in matters regarding women's issues.

## Conclusion

In the texts from Qur'ân and *hadîth* a high esteem is expressed for women who are experiencing *hayd*, *nifâs* and *istihâdah*, which are seen as natural elements of a woman's reproductive cycle. Not one text suggests that women who are menstruating or suffering from other forms of bleeding (as during post-natality and in periods of involuntary loss of blood) are 'filthy', 'dirty', or that they should be isolated. In *fiqh* too a woman's reproductive processes are never considered negatively, even though some legal outcomes in *fiqh* seem gender-biased.

However, considering that *hayd*, *nifâs*, and *istihâdah* are not only about religious rituals and husband-wife relations but are directly related to women's reproductive health, the various rules and regulations on these issues should be based on women's real condition, their needs and interests. There are many variations in the occurrence of *hayd*, *nifâs* and *istihâdah*, of course on an individual level, but also influenced by our modern use of contraceptives, the availability of medicines and drugs, growing pollution, and the changing social role and position of women (as breadwinners); all

these factors should be taken into consideration in the process of formulating laws concerning these issues. Normative approaches are not sufficient to address the various problems related to *hayd*, *nifâs* and *istihâdah*: in order to guarantee that Islamic laws protect women's reproductive rights an interdisciplinary approach is needed.

Medical science could actively participate in the law-making process, for instance to assist in taking decisions in problematic cases. Medical experts might be able to clarify whether it is (or isn't) permissible for a man to have sex with his wife when she experiences a period of *istihâdah* (involuntary bleeding), or shortly after giving birth, even though she does not experience *nifâs* - in terms of conventional *fiqh* these are acceptable instances of sexual activity. Positive law too could be involved in addressing and guaranteeing women's reproductive rights outside the household, i.e. in the public sphere.

Islamic laws and regulations on *haid*, *nifâs*, *istihâdah* and other factors concerning women's reproductive rights should be based on the moral and ideal values as expressed in the Qur'ân, which so clearly formulates a viewpoint that rejects the discrimination of women, including their reproductive cycle. They should also take into consideration the personal, physical and social condition of women as formulated in the *hadîth*, which should be the basis for any law applied to women's issues. Women's reproductive rights should be guaranteed in every formulation of Islamic law. To guarantee women's reproductive rights is equal to maintaining our humanity and the lives of our descendants, *hifz an-nasl*, which is one of the principle purposes (*maqâsid ash-shari'ah*) in Islamic Law.[]

مَا ضَرَبَ رَسُولُ اللَّهِ عَلَيْهِ وَسَلَّمَ شَيْئًا قَطُّ بِيَدِهِ، وَلَا امْرَأَةً وَلَا خَادِمًا

*“... that never, not once has the Prophet slapped someone with his hand.*

*He has never slapped a woman nor a servant...”.*

Hadits (in: Ibn al-Atsir XII:23-24, no. 8780).

## Redefining the Concept of 'Iddah<sup>1</sup>

Abd. Moqsih Ghazali

This article explains 'iddah from its historical context, and discusses some of the views of classical Islamic jurists. It also introduces the view that the practice of 'iddah in Islam served to support the social position, needs and interests of widowed or divorced women.

History shows several instances in which women in pre-Islamic Arab society had to endure various forms of humiliation ('dehumanization'). Some of these concerned the traditions to which widowed and divorced women had to conform. These traditions were not obliged for men, either widowers or men who were divorced. 'Iddah and *ihdâd*<sup>2</sup> in pre-Islamic times were traditions according to which a widowed woman and her relatives had to spend one year in isolation, in a separate room of the house, in order to honour the obligatory period of mourning.<sup>3</sup> It was required that during this period of isolation the widowed woman did not use perfume, trim their nails, comb their hair, or even take a bath. She could scrub her body, but she could only be accompanied by animals like donkeys or goats in doing so. One of the Prophet's *hadîth* mentioned that the body odour of a woman in *ihdâd* was so bad, that no one dared to approach her; and that after her mourning period the crows would come immediately and prey on her as if they preyed on a cadaver.<sup>4</sup>

Islam introduced some basic changes in this tradition. It formulated clearer rules and regulations for the period of mourning, defining for instance a much shorter period. The main purpose of 'iddah in Islam was to guarantee the condition of a widowed or divorced woman's womb: it was meant to ensure that she was either already pregnant by her deceased- or her divorced husband or not pregnant at all. It was not meant as a punishment for the death of-, or the divorce from her husband or a relative. Islam also required that 'iddah be conducted ways that a woman would not needlessly suffer.

<sup>1</sup> This article is a summary of Abd Moqsih Ghazali's "Iddah dan Ihdad: Legal-formal and ethical-moral considerations", published in Abd Moqsih Ghazali et.al., "Body, Sexuality, and Women's Independence: A Collection of the Thoughts from Young Religious Figures" (2004). It has been summarized here by Abd. Moqsih Ghazali for the purposes of this publication.

<sup>2</sup> Shah Waliullah al-Dihlawiy, *Hujjah Allah al-Balighah* (Beirut: Dar Ihya' al-Ulum), s.a., series II, pp. 377.

<sup>3</sup> Muhammad ibn Idris al-Shafi'i, *al-Umm*, Beirut: Dar al-Fikr, 1983, Juz V, pp. 247.

<sup>4</sup> See al-Qurthubiy, *al-Jâmi' li Ahkâm Alquran*, Kairo: 1969, Juz II, pp 194. Compare with Masdar F. Mas'udi, *Ihdâd dan 'iddah in the Lives of the Changing Disciples*; Unpublished paper delivered in a seminar on "The Implications of the Global Transformation on the 'Iddah Concept"; Lis-Sakinah, Situbondo, February 27 1997.

### **'Iddah in classical fiqh**

The majority of *ulama fiqh* hold the opinion that 'iddah is a fixed period that begins at the moment of a woman's separation from her husband – which may either happen as a result of divorce, or his death. Within this period, the woman is not allowed to marry, or have a sexual relation with another man.<sup>5</sup> This custom in Islam is based on several verses in the Qur'ân, including the following:

- “...And divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and the Last Day. And your husbands have the better right to take them back in their periods, if they wish for reconciliation. And they (women) have rights (over their husbands as regards living expenses), similar (to those of their husbands) over them (with regard to obedience and respect) to what is reasonable, but men have a degree (of responsibility) over them. And Allah is All-Mighty, All-Wise...” (QS. Al-Baqarah, 2: 228).
- “...And those of you who die and leave a wife behind, they (the women) shall wait (with regards to their [new] marriage) for four months and ten days, then when they have fulfilled their term, there is no sin on you if they (the women) dispose of themselves in a just and honourable manner (i.e. they could re-marry). And Allah is Well-Acquainted with what you do...” (QS. Al-Baqarah, 2: 234).
- “... And those of your women as have passed the age of monthly cycles, for them the period of 'iddah (prescribed period), if you have doubts (about their periods) is three months; and for those who have no cycle (i.e. those women who are still immature or have reached menopause) their 'iddah is three months likewise, except in case of death. And for those who are pregnant (whether they are divorced or widowed), their 'iddah is until they lay down their burden (and have given birth); and whosoever fears Allah and do their duty to Him, He will make their matter easy for them...” (QS. Al-Talâq, 65: 4).

According to Islam there are two reasons for a woman practicing 'iddah. First, because of her husband's death, in which the period of seclusion lasts four month and ten days, provided she is not pregnant. If she is pregnant, the period of 'iddah would last until she has given birth. Secondly as a result of divorce, in which she has to undergo a period of 'iddah until she either (1) has given birth, in case she was pregnant at the time of the divorce, (2) has had *qurû*, i.e. the 'purified period' in between her menstruation cycles for three times, or (3) for three months in case she does not- or does no longer have her period, either because she's too young and hasn't begun menstruating yet, or after menopause.

<sup>5</sup> Zakariya al-Ansâriy, *Fath al-Wahhâb Sharh Manhaj al-Thullâb*, Beirut: Dar al-Fikr, 103. Al-Bujairimiy, *Bujairimy 'ala al-Khatib*, Beirut: Dar al-Fikr, 1981, Juz IV. Also read *Hashiyah al-Bujairimiy 'ala Sharh Manhaj al-Thullab*, Beirut: Dar Shadr, S.a., Juz IV, pp. 76. Compare with Sayyid Sabiq, *Fiqh al-Sunnah*, Series II, Beirut: Dar al-Fikr, IV edition, year 1403/1983, pp. 277

### Social ethics in 'iddah

The *ulama fiqh* have formulated several conditions for the development of social ethics in 'iddah. First during 'iddah a woman is not allowed to accept a marriage proposal from a man, either explicitly or implicitly. On the other hand, a man who wishes to propose to a widowed woman during her 'iddah period has to do so indirectly. This is described in QS. Al-Baqarah, 2: 235:

“...And there is no sin on you if you make a hint of betrothal or conceal it in yourself, Allah knows that you will remember them, but do not make a promise of contract with them in secret, except that you speak honourably according to Islamic law. And do not consummate the marriage until the prescribed term is fulfilled. And know that Allah knows what is in your minds, so fear Him. And know that Allah is Oft-Forgiving, Most Forbearing...” (the women referred to here are those whose husbands have died: a widow).

*Fiqh* has also ruled that a woman during 'iddah is not allowed to express new marriage vows in an absolute manner, based on the formulation in Al-Baqarah, [2]: 235, “...and do not consummate the marriage until the term prescribed is fulfilled...”.

Secondly, during the period of 'iddah a woman is not allowed to go outside her house<sup>6</sup>. Several scholars from *madhhab fiqh* (Shafi'i, Malik bin Anas, Ahmad bin Hanbal, and al-Layth) have agreed on this: women in 'iddah shall not leave their house, unless for urgent matters, including working outside the household in order to make ends meet. However, there are differences between Malik and al-Shafi'i. For Malik, the prohibitions for *mu'taddah* (women in 'iddah) are absolute, regardless whether this involves *talak raj'i* (a first-time divorce decree) or *talak bâ'in* (a third-time, final divorce decree). But according to as-Shafi'i, a *mu'taddah* who is involved in her third-time, final divorce is not allowed to leave the house for one whole day, and only in the afternoon.<sup>7</sup>

Their motivations are based on the Prophet's words, as recounted by Jabir bin Abdullah, who has said that

“...My aunt from mother's side had been given *talaq* three times by her husband, but she went out to pick dates. Suddenly she was approached by a man who told her not to go out. When I mentioned the incident to the Prophet, he said that “You can leave the house to go to your farm to pick the dates, (and) hopefully you'll be able to aid people with the dates and do something good according to your judgment...” (Hadîth of al-Nasâ'i and Abû Dâwud).

In the story of *Mujâhid* it is told that several men had died as martyrs during the *Uhud* War. Their widows came to see Prophet Mohammed, and they asked the Prophet whether they were allowed to go out that night. He later answered:

<sup>6</sup> See al-Dhahabiy, *al-Sharî'ah al-Islâmiyyah: Dirâsah Muqararah baina Ahli al-Sunnah wa Madhhab a-Ja'fariyyah*, pp. 373

<sup>7</sup> Al-Qurthubiy, *al-Jâmi' li Ahkâm Alquran*, Juz XIII, pp. 154-155.

"...All of you (who have been widowed by your husbands) can gather at night and when you're sleepy you can return to your houses..." (Hadîth of Ahmad bin Hanbal, Abû Dâwud, al-Nasâ'î, al-Tirmidhi and Ibnu Mâjah).<sup>8</sup>

The question is how 'iddah should be practiced by widowed women. There is no direct reference on this issue in the Qur'ân. There is a statement based on one of the *hadîth*, according to Malik and several others. It is said that the Prophet told a woman, Furai'ah binti Malik bin Sanan to stay in her house after her husband's death. When she heard this, Furai'ah practiced 'iddah for four months and ten days.<sup>9</sup>

However, according to Imam Dawud a widowed woman is not obliged to practice 'iddah in her house, but in what ever other place she likes, because the obligation to stay in the house only applies to women who are going through the process of divorce, *mutallaqah*. According to other religious leaders, who support this opinion, the Prophet's words, as told to- and subsequently recounted by Malik, are in fact what is known in formal Islam 'weak', based on the fact that the Prophet's original formulation was retold and passed on to others by an unknown number of transmitters. Therefore the Prophet's often cited formulation according to which it is justified to prevent women from leaving the house during the proscribed period of 'iddah, is not acceptable to all *ulama*.

Thirdly there are the ethics related to a woman's period of mourning, or the obligation to practice *ihdâd* for a widowed woman. In Arabic, *ihdâd* literally means the condition of a woman being unadorned to show her mourning for her husband or relative.<sup>10</sup> For deaths other than that of her husband, a woman practices *ihdâd* for three days. *Ihdâd* for a deceased husband could last four months and ten days. In conventional *fiqh*, *ihdâd* is only applied for widowed women, not the other way around, for widowed men. *Ihdâd* is not obligatory for women who are involved in the process of divorce, including *raj'i* and *bâ'in talâq*.<sup>11</sup>

The Qur'ân emphasizes that it is a man's duty to be financially responsible during his marriage and, when this occurs, the process of divorce. This happens in the form of supporting his wife during their marriage, and giving a guarantee (*mut'ah*) for a wife who is involved in a divorce during the period of 'iddah. This is described in Al-Baqarah (2: 236): "...There is no sin on you if you divorce a woman when yet you have not touched (her)<sup>12</sup>, or appointed unto them their *mahr*.<sup>13</sup> But bestow on them (a suitable gift), the

<sup>8</sup> See Sayyid Sabiq, *Fiqh al-Sunnah*, Juz II, pp 158-159

<sup>9</sup> Al-Qurthubiy, *al-Jâmi' li Ahkâm Alquran*, Juz III, 171 Compare with al-Shairazi, *al-Muhadhdhab fiy Fiqh al-Imâm al-Shafi'i*, Juz II, pp. 147.

<sup>10</sup> Ibnu Qudamah, *al-Muqni' fiy Fiqh Imam al-Sunnah Ahamd ibn Hanbal al-Shaibaniy*, Juz III, pp 289-291. Also read, Muhammad ibn Abdurrahman al-Dimashqiy, *Rahmat al-Ummah fiy Ikhtilaf al-A'immah*, Qatar: Publisher unavailable, 1981, pp 314

<sup>11</sup> Al-Shairazi, *al-Muhadhdhab fiy Fiqh al-Imam al-Shafi'i*, pp.149. Abd al-Barr al-Namiri, *al-Kafiy fiy Fiqh Ahl al-Madinah al-Malikiy*, pp 294.

Compare with Ibnu Rushd, *Bidayah al-Mujtahid wa Nihayah al-Muqtashid*, Juz II, pp. 92. Some religious leaders believe that *ihdaad* is only required of women who are involved in *talaq (muthallaqah)*. See: Zakariya al-Anshariy, *Fath al-Wahhab Sharh Manhaj al-Thullab*, pp. 107.

<sup>12</sup> When they have (not yet) 'consummated the marriage', i.e. (not yet) have engaged in any sexual activities together, as is expected from a married couple.

<sup>13</sup> Bride price given by a future husband to the woman he's going to marry at the time of the marriage.

*rich according to his means, and the poor according to his means, a gift of reasonable amount is a duty for those who do well...".*

The *ulama* agree that a woman who practices 'iddah based on a divorce, particularly *talâq raj'i* (a first-time divorce decree) has the right to receive her daily livelihood and shelter provided by her (former-) husband. They also agree that a woman who is in the process of being divorced by her husband (either the first-time *talâq raj'i* or the third-time, final *talâq ba'in*) and who is pregnant at the time of divorce is entitled to receive support and shelter until she gives birth.<sup>14</sup>

In daily life when there is a divorce, people tend to focus more on a woman's obligation to practice 'iddah, and much less about the right to receive support from her (ex) husband. It seems that classical *fiqh* pays more attention to defining the conditions for a woman's period of 'iddah than a (former-) husband's ethical and practical duty to support his (former) wife.<sup>15</sup> However it is argued here that 'iddah can be regarded as a custom that was created in an effort to protect women, particularly after a divorce or the death of a husband. During the period of 'iddah a woman retains her right to social and economic protection. This becomes clear from another verse in the Qur'ân, which describes the case of a husband who included the clause in his testament that his (widowed) wife was entitled to receive support for a whole year. This is formulated in Al-Baqarah (2: 240): "...And those of you who die and leave behind a wife should bequeath for their wife a year's maintenance and residence without sending them away...".

Judging from some the prevailing conditions in pre- and early Islamic Arab society it is evident that Islam introduced several ways in which women's rights could be protected, particularly widowed or divorced women. In the context of early-Islamic Middle Eastern culture this was, for various reasons, an important achievement. In the first place women had very few rights and occupied an unequal social position; they could never be sure of their rights (as opposed to their obligations), and this would become particularly acute after the death of a husband or after a divorce, when a woman was no longer formally dependent on-, or provided for by a husband or his relatives. 'Iddah guaranteed a period of tranquillity in which a woman could come to grips with the new situation, i.e. that she needed to be taken care of, but not forcibly into accepting just anyone's protection – or (sexual) exploitation. In the second place a married woman was the social and economic responsibility of her husband and his relatives, her in-laws. Based on historical and other data it is difficult to find any reference to a woman's right (or obligation) to earn a living, and to be able to provide for herself, or to complement the needs of the household and its dependants (including her children). In this context 'iddah functioned as a period in which a divorced, or widowed woman had to prepare

<sup>14</sup> Al-Bujairimiy, *Bujairimiy 'ala al-Khathib*, pp 45. See: Ibnu Rushd, *Bidayah al-Mujtahid wa Nihayah al-Muqtashid*, hlm. 76. Compare with: Taqiyuddin al-Husainiy, *Kifayah al-Akhyar fiy Hall Ghayah al-Ikhtishar*, pp. 132.

<sup>15</sup> Masdar F. Mas'udi, *Ihdâd dan 'iddah in the Lives of the Changing Disciple*, pp. 4.

herself for a future period of (economic) independence.<sup>16</sup>

*'Iddah* was required to support a woman during a transitional period, either for the bereaved or a divorcée. The Prophet's views on *'iddah* signified a more or less radical change of some of the existing practices for at least two reasons: they replaced some of the extreme rules and regulations that were customary for *'iddah* in the previous period with ones that were more practical, focused, and humane. Islamic views on divorce too, finally, supported and ensured ways for divorced women to retain certain rights and not be forced into arbitrary dependency relations, as was the case in previous periods.[]

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<sup>16</sup> See Asghar Ali Engineer, *Women's Rights in Islam*, pp. 185-201. Compare with Lies Marcoes-Natsir, *Haidh dan 'iddah: A Review on Gender Analysis*", a paper delivered in the discussion on "Implications of Global Transformations on the 'iddah Concept"; Lis-Sakinah, Situbondo, 27 February 1997, pp 3.

## Al-Radâ'ah: Breastfeeding

*Marzuki Wahid*

**W**hen one talks about breastfeeding in Islam, *Ar-Radâ'ah*, it includes discussing issues such as the milk produced by a woman, *al-laban*, the role and status of the person who feeds, the right of an infant to be breastfed, a mother's rights to- and a father's duty in the process of breastfeeding, and the social impact of breastfeeding. Throughout the history of mankind milk and blood are considered substances that have shaped society. We ascribe tremendous influence to both substances: while blood creates brotherhood, milk establishes kinship ties.

Mother's milk is the staple food and drink for any newborn. Practically no other food stuffs or fluids are more suitable for a baby's consumption, its survival, and its growth. Breastfeeding is sometimes seen as a noble act, although exclusively reserved for women, as they are the ones who can naturally produce and provide it. However, it is a mistaken common perception that only women are involved in and responsible for this process, as if men, particularly in their role as fathers, do not share in the responsibilities of breastfeeding, supporting the necessary conditions for women to breastfeed. Even though men are equally involved, a variety of excuses, ranging from concepts related to nature, fate, destiny, humanity, or a mother's duty is sometimes used to prove the contrary.

Concepts on breastfeeding, *al-radâ'ah* are clearly expressed in the Qur'ân and several *hadîth*. Yet similar to other verses in the Holy Scripture these texts are still broadly open for (re-) interpretation, although in *fiqh*, usually understood as practical Islamic jurisprudence (*al-amaliy*) the various views on breastfeeding are captured most clearly. Most of the various *madhhab fiqh* discuss the issue of breastfeeding under the heading of *nikâh*, marriage. Discussions in *fiqh* often focus on two issues. In the first place the social consequences of breastfeeding, which result in the establishment of kinship relations (*mahram*) and which place restrictions on one's marriage partner. Secondly disputes on the financial compensation for breastfeeding, often not by a child's biological mother but a foster-mother. However, even though some texts address breastfeeding as seen from a child's right, *haqq al-radî'*, the issue of health care for breastfeeding women (mothers), *haqq al-murdhi'ah* is rarely mentioned, to the point of neglect.

## The meaning of breastfeeding and its elements

Breastfeeding is known in *fiqh* as *al-radâ* or *al-ridâ*. The words come from the verb *rada'a* (*radi'a*) – *yardi'u* (*yarda'u*) – *rad'an*, meaning 'to suck' ('breastfeeding'). Hence the term for the suckling baby *ar-radhî* or *al-râdhi'i*; the breastfeeding mother is called *al-murdi'ah*.<sup>1</sup> *Ar-radâ'ah* or *ar-ridâ'ah* is the term for sucking milk, either by humans or animals, and the term itself is not limited to the suckling of babies only.

*Al-radâ'ah al-shar'iyyah*, breastfeeding, includes a woman's breast milk, *labanu adamiiyyatin*,<sup>2</sup> which goes to a baby's stomach, *wusûluhu ilâ jawfi tiflin*, during the time when the baby is younger than two years. Feeding a baby with animal- or other kinds of milk, such as from cows, goats, sheep (soy beans) is not included in this concept. The preferred maximum time limit for breastfeeding a baby is two years, because it is generally assumed that mother's milk only affects the child's physical and mental developments during those years. Breastfeeding that takes place at a later time is not part of *al-radâ'ah al-shar'iyyah*. The process of breastfeeding is gradually replaced by weaning after this period of two years.

*Al-radâ'ah* is an issue that has received due attention by the Prophet, so both the Qur'ân and *hadîth* provide texts for our understanding of the ethics and consequences of breastfeeding.

Many *ulama* agree that 'a breastfeeding woman' has a variety of meanings. It can be a woman who has, or has not yet come of age; it can be someone who is married, or who is unmarried, or someone who is pregnant, or who is not pregnant. The milk they produce and which they feed to a baby is included in the definition of *al-radâ'ah ashshar'iyah*, but perhaps more importantly the act of breastfeeding has far-reaching social consequences, for it results in the establishment of direct kinship ties between a breastfeeding woman (be it a child's biological or 'foster'-mother) and the child (-ren) she feeds.<sup>3</sup>

## Texts from the Qur'ân

Several verses in the Qur'ân concern breastfeeding. Although they have different topics and are divided in different *shûrâ*, they are complementary and closely related, emphasizing the central role of breastfeeding, its (social) consequences and conditions.

QS. Al-Baqara (2: 233) is perhaps the most outspoken:

“...The mothers shall breastfeed their children for two whole years, (that is) for those

<sup>1</sup> Munawir, Ahmad Warson, *Arab-Indonesia Dictionary* by al Munawir; Yogyakarta.

<sup>2</sup> *Madzhab* Hanafi proposed a particular condition for the milk, i.e. that it should be liquid. Feeding a baby solid-state milk (-products), such as cheese, butter, is not seen as establishing kinship bonds; Al-Jaziri, *ibid.loc.cit.*: 254.

<sup>3</sup> Ibn ar-Rusdyd al Qurthubiy al-Andalusiy, *Bidâyat al-Mujtahid wa Nihâyat-al-Mustashid*, Juz I, p. 30; Sayyid Sabiq, *Fiqh as – Sunnah*, part II (, Beirut : Dar al Fiqr; 1987): 92.

*(parents) who desire to complete the term of suckling, but the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis. No person shall have a burden laid on him greater than he can bear. No mother shall be treated unfairly on account of her child, or a father on account of his child. And on (father's) heir is incumbent the like of that (which was incumbent on the father). If they both decide on weaning, by mutual consent, and after due consultation, there is no sin on them. And if you decide on a foster suckling–mother for your children, there is no sin on you, provided you pay (the foster-mother) and what you agree (to give her) is on a reasonable basis. And fear Allah and know that Allah is All-Seer of what you do...".*

It describes four key elements. It says there is guidance from Allah for the mothers who breastfeed their child, continuously, for two years after its birth; that there is the obligation for a father to provide sufficiently and decently food and clothing for the breastfeeding mother; that it is possible to start weaning the child before it reaches its second year (as long as there is consensus between the parents); and that it is possible to appoint a foster–mother who breastfeeds the child.

In QS. An Nisa (4: 23) it is stated that, based on a woman's breastfeeding certain individuals are not eligible for marriage:

*"...Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your foster mothers who breastfed you, your foster-mother's milk-sucking sisters, your wives' mothers, your step–daughters under your guardianship, born of your wives whom you have penetrated – but there is no sin on you (to marry their daughters) if you have not penetrated them, the wives of your sons (who have sprung) from your own loins, and two sisters in wedlock at the same time, except for what has already passed; verily, Allah is Oft-Forgiving, Most Merciful."*

These prohibitions are a result of the close kinship ties that are established as a result of breastfeeding, between a child and its parents and other siblings; Islamic ethical considerations equally forbid someone to marry any of the (foster-) parents or their direct descendants (one's 'foster-siblings').

In QS. Al Hajj (22: 2) it is described that on the worst of bad days (Armageddon) the situation gets so bad that even breastfeeding mothers will 'forget' to care for their child:

*"...The Day you shall see it, every nursing mother will forget her nursling and every pregnant woman will drop her load, and you shall see mankind as in a drunken state, yet they will not be drunk, but severe will be the Torment of Allah..."*

In QS. Al-Qasas (22: 7), which refers to Moses it is said that

*"...And We inspired the mother of Musa: 'Breastfeed him [Musa]. But when you fear for him, then cast him into the river and fear not, do not grieve. Verily, We shall bring him*

*back to you, and still make him one of Our prophets'...".*

The next, QS. Al-Qasas (22: 12) also refers to Moses, saying:

*"...And We had already forbidden (other) foster-mothers to breastfeed him, until she (his sister came forward and) said:" Shall I direct you to a household which will bring you up, and look after him well?..."*

In QS. Ath-Talâq (65: 6) it says:

*"...Give them (the divorced women) shelter where you dwell, according to your means, and do not harm them so that they don't feel uncomfortable (and obliged to leave your house). And if they are pregnant, then provide for them until they give birth. When they breastfeed the child for you, give them their due reward, and let each of you accept the advice of the other in a just way. But if you make difficulties for one another, then some other woman may breastfeed the child for him (the father)...".*

Although this verse concerns some of the conditions during the process of divorce, it also emphasizes a man's duty – in his role of father - to pay an allowance to his divorced wife (*mutallaqah*) if she is breastfeeding his offspring, a payment apart from the livelihood that she is entitled to receive before the end of her obligatory period of seclusion, *'iddah*. Furthermore that there should be permission and remuneration for a woman to breastfeed another person's baby, based on mutual consensus.

### **Breastfeeding: a mother's duty or a child's right?**

In *fiqh* literature some regard the process of breastfeeding as a mother's duty, while others see it a child's basic right.<sup>4</sup> According to *sharia* it is an obligation for an infant's natural mother (Ahmad Mustafâ al-Marâghiy): ultimately, before Allah a mother is held accountable (*al-mas'uliyah*) for the life of her child (-ren).<sup>5</sup> Others maintain it is an obligation only for the woman who is married to the child's father; this also includes *al-mutallaqah*, a woman who is in the process of divorce, during her obligatory *'iddah*-period.<sup>6</sup> A slightly different view, based on *shura* QS. Al Baqara (2: 233) mentions that when a husband divorces his wife while the couple have a baby, the former wife/the child's mother has the right to breastfeed it.<sup>7</sup> Breastfeeding here is seen as a *shara'*, obligation for a child's natural mother – surprisingly, because the verses from the Qur'ân

<sup>4</sup> *Madzhab* Hanafi-scholars have formulated two basic conditions determining who breastfeeds: (1) it must be a woman (if a father could discharge milk from his breasts and feeds it to the baby, it would not change *fiqh* on breastfeeding), and (2) the breastfeeding mother should be at least nine years old. Curiously, the Hanafi scholars did not necessitate the breastfeeding mother to be alive! According to Hanafi if a deceased mother discharges milk, the milk must be made available to be fed to the baby, to establish kinship ties between the baby and the mother (Al-Jaziriy, op.cit, juz IV: 253; Sayyid Sabiq, *fiqh as-Sunnah* (Beirut, Dar-al Fikr, s.a., 2<sup>nd</sup> edition) : 92). *Madzhab* Shafii has formulated that the breastfeeding woman should be 'in a living condition' (Wahbah az-Zuhaili, *al-Fiqh al-Islamiy wa Adillatuhu*, juz VII, [Damascus, Dar-al Fikr, 1996] pp.706).

<sup>5</sup> Ahmad Mustafa Al-Maraghiy, *Tafsir al-Maraghiy*, juz I (Beirut: Dar Ihya' at-Turats al-'Arabiyy, s.a.): 185.

<sup>6</sup> Wahbah al-Zuhaili, op.cit.: 698. Muhammad Hussain adz-Dzahabiyy, *ash-Shariah al-Islamiyah*, (Egypt, Dar-al-Kutub al-Haditsah, 1968): 398; Ahmad Mustafa al-Maraghiy, op.cit.: 185.

<sup>7</sup> as formulated by Ibnu Abi Hatim and Said Ibn Zubair; Jalaluddin as-Suyuthi, op.cit.: 687.

do not reflect such an obligation.

Ulama from *madhhab* Maliki believe that a judge is therefore entitled to order a mother to breastfeed her baby, unless when a mother is in the last stages of a divorce (*talâq bâ'in*); this is based on the Qur'ân's At-Thalaq (65: 6).<sup>8</sup> Most other religious leaders, however, disagree: they only go so far as ordering a mother's obligation in an emergency situation (*darûrat*).<sup>9</sup> According to the *ulamâ jumhur* this obligation is rather seen as a moral-humane call (*diyânatan*), than an ethical duty (*qadâ'an*):<sup>10</sup> if a mother does not want to breastfeed, neither the husband nor the court can force her. However, many maintain that a child's biological mother **must** breastfeed otherwise it could not survive (*madhhab* Shâfi'i).<sup>11</sup>

Qur'ân's Al-Baqarah (2: 233) too suggests that a mother should breastfeed her baby, thus pointing to her obligation towards the child. When a baby does not accept milk other than from its natural mother, or when a father cannot afford to pay another woman to breastfeed the child, a mother has no choice and must breastfeed. It is furthermore seen as the right of a child to receive, to be fed high quality mother's milk: breastfeeding is thus equally seen as an obligation for a mother and a right for a baby. There are exceptions, as mentioned in the Qur'ân:

"... But if you make difficulties for one another, then some other woman may breastfeed the child..." (QS. At-Talâq (65: 6)).<sup>12</sup>

Some have interpreted this as two related understandings, *yurdhi'na awlâdahunna*, to be understood as a *kalâm khabar*, or *inshâ*: this is because the verse contains an element of order (i.e. ordering someone to do something), but not an obligation.<sup>13</sup> It recognizes the idea that even though mothers seem to be ordered by Allah to breastfeed, to truly care for a baby really depends on the power of the human heart.

Islamic Sharia jurists insist that for a child's biological mother breastfeeding can only be obligatory under certain conditions - for instance when a baby does not accept milk other than from its natural mother, when there is no other woman available who can do this, if the father of the baby is unknown, or when the father cannot afford to pay another woman to take over this task.<sup>14</sup> It is still seen as part of a mother's duty: from a biological perspective women are the only ones who can produce milk to sustain and support a baby, particularly a newborn. But it is also related to the *sabab al-nuzûl* (QS.

<sup>8</sup> "fa'in ardha'na la kum fa'tûhunna ujûrahunna".

<sup>9</sup> According to al-Ĥamawî: 'emergency' is the ultimate degree of being forced to do something ('in case a mother carries it out, her life will be threatened'). *Hâshiyah al-Ĥamawî 'alâ al-Ashbah wa an-Nadhâ'ir li Ibn Nujaym*, p. 108.

<sup>10</sup> Muhammad Ali as-Shabuniy, *at-Tibyan fiy Ulum al-Qur'an* (Mecca: s.n., 1980): 1146.

<sup>11</sup> Wahbah az-Zuhayli, *Op. Cit.*, Juz VII, pp. 699.

<sup>12</sup> Wahbah az-Zuhayli, *op.cit.*: 699; Muhammad Ali as-Shabuniy, Rawa'i al-Bayan: *Tafsir Ayat al-Ahkam min al-Qur'an* (Mecca, s.n., s.a.): 353.

<sup>13</sup> Ash-Sharbiniy includes breastfeeding in the discussion of *al-hadlanah* (baby care): if *al-hadlinah* (the care giver) does not have breast milk or is kept from breastfeeding, she should not be held responsible to do so (Muhammad Ash-Sharbiniy al-Khatib, *al-Iqna'fiy hil Attadh Abi Shuja*, juz I (Egypt, Dar Ihya al-Kutub al-'Arabiyyah, s.a.): 196.

<sup>14</sup> Muhammad Hussain ad-Dzahabiy, *ash-Shariah al-Islamiyah* (Egypt, Dar-al Kutub al-Haditsah, 1968): 398

Al-Baqarah:233), where Allah has said "...*wal wâlidatu yurdi'na awladahunna hawlayni kamilayni...*", in connection to the situation where a man who was divorcing his wife while she had just given birth to his baby, and causing her to retain custody rights over the baby because she was breastfeeding it.<sup>15</sup>

There are a number of provisions for a man, in his role of father to share the responsibilities of breastfeeding. The Qur'ân mentions it should not be a source of hardship for parents: it is natural and perfectly acceptable to ask another woman to take over this task in some cases, but the father/husband is obliged to provide economic support.<sup>16</sup> This includes (1) an allowance for breastfeeding; (2) the expenses for baby- and childcare; (3) the household's/family's daily expenses; (4) the expenses of a place to live, and (5) a (woman-) servant's salary (in case this is needed).<sup>17</sup> These obligations are guaranteed for any woman who is breastfeeding or in other ways raising a man's child. Even in the case when a couple is in the process of divorce, and the (former-) wife performs her obligatory *'iddah*, her (former-) husband should still give her (and the possible others involved in breastfeeding his child) an equal amount of payment outside the already agreed amount of alimony.<sup>18</sup>

In the Compilation of Islamic Laws (chapter on child rearing) it is stated that

- 1) All the expenses related to breastfeeding a baby shall be borne by its father. In case the father has passed away, these expenses are the responsibility of the person who supports the baby instead of its natural father (its guardian);
- 2) Breastfeeding takes place for two years at the most, but can take place for a shorter period, as long as both parents agree.<sup>19</sup>

### The rights for a breastfeeding allowance

There are several situations in which a child's biological mother who is breastfeeding has the right to receive or expect financial support.<sup>20</sup>

A mother's demand for the payment for breastfeeding is not legally valid when she is still legally married, or during the process of divorce when she is in her period of *'iddah*, at least according to most scholars (*madhhab* Hanafi, Shafi'i, and Hambali). After all, in these situations the (former-) husband still has the obligation to support her, so she has no right to expect an additional payment (*ujrah*); the compensation for breastfeeding is included in the expenses for the family/household's daily livelihood.

However, when she has finished the obligatory *'iddah* the *ulamâ* agree that she may

<sup>15</sup> By Ibnu bi Hatim from Sa'id bin Jubair: "...*wal walidatu yurdi'na awladahunna hawlayni kamilayni...*"; Jalal ad-Din as-Suyuthiy, op.cit., juz I: 687.

<sup>16</sup> Ahmad Mustafa al-Maraghiy, *Tafsir al-Maraghiy*, juz I, (Beirut, Dar-Ihya at-Turats al-Arabiyy, s.a.): 185.

<sup>17</sup> Wahbah az-Zuhayli, op.cit, juz VII : 704.

<sup>18</sup> Jalal ad-Din as-Suyuthiy, *Op. Cit.*: Juz I: 687.

<sup>19</sup> Chapter XIV, Childraising; Chapter 104, # 1 and # 2; Presidential Order No. 1/1991.

<sup>20</sup> *Ibid.*, pp. 700-701; Wahbah az-Zuhayli, a well known jurist from Syria: '*al-Fiqh al-Islâmy wa Adillatuhu*'.

demand payment for breastfeeding, and that her former husband/father of the baby is obliged to comply and pay her justly. This is based on a *fiqh* ruling for divorced women who have finished their obligatory 'iddah, which stipulates that she is no longer entitled to receive (financial) support from her former husband.<sup>21</sup> Also when a breastfeeding woman is in the final stages of a divorce, 'iddah talâq bâ'in, she may demand/expect payment for breastfeeding. This is based on existing Islamic jurisprudence: the status of a woman who has reached the stage of talâq bâ'in is considered similar to a woman who has no marital relations (*al-ajnabiyyah*), because she no longer receives financial support (from her former husband).

This opinion is held by some of the leaders of *Hanafiyyah* and *Malikiyyah*, and is based on a verse in the Qur'ân,

“... and if you find difficulties, other women can breastfeed [the child], the father also has the obligation to give a just payment to them...”. (QS. Al-Talâq, 65:6).

### Social implications of breastfeeding: establishing and defending kinship ties

According to Islamic jurisprudence a man is prohibited from marrying the woman who has breastfed him when he was a baby, and all other women who are related to her by blood when he is an adult.<sup>22</sup> There is also a *hadîth*, quoted by Imam Ash-Shafi'i which says

“...what is prohibited by birth is also prohibited because of breastfeeding...”.<sup>23</sup>

The vast implications of breastfeeding on establishing kinship ties now become clear. The best known legal prohibition concerns marrying 'a relative', *mahram*.

At the time of a wedding both partners make sure that they are not related (in an Islamic legal sense), a process known as *iqrâr* ('confession'). If they confess that they are foster-brother/-sister, and their confession is true, this would prohibit their marriage. If such a confession is given, or emerges after the marriage, their marital ties, according to the law, will be annulled. If the couple does not want to file for divorce voluntarily, a judge has the right to force them: they will be divorced by a court ruling.<sup>24</sup> There is also *shahadah*, a testimony expressed by one or more individuals who have witnessed or know for a fact that a man and a woman are related (*mahram*).

There is, however, disagreement among the *ulamâ* on the composition and

<sup>21</sup> QS. Ath-Thalâq (6) "... fa'in ardhana la kum fa â'tûhunna ujûrahunna wa'tamirû baynakum bi ma'rûfin...".

<sup>22</sup> QS. An-Nisa (:23) "...it is forbidden to you ...[to marry] your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, the foster-mothers who breastfed you, your foster-sisters [from the same breastfeeding woman] ...".

<sup>23</sup> *Fa kullu ma hurima bi al-wiladah wa bi sababiha hurima bi ar-Radla*; Abi Abdillah Muhammad bin Idris ash-Shafi'iy, *al-Umm*, Juz VIII, (Beirut: Dar al-Fikr, 1983): 332.

<sup>24</sup> *Iqrâr* in Islam always takes precedence over other forms of proof. If a woman confesses that she had been breastfed by someone, her confession is directly accepted (Abdurrahman bin Muhammad bin Husain bin 'Umar Ba'lawi, *Bughyat al-Mustarshidîn*, [Mesir: Mushthafa al-Babi al-Halabiy wa Awladuhu, 1936]:244).

number of witnesses needed in such a case: it must be a testimony given by two men, or one man and two woman witnesses, or four women. Testimonies other than that are unacceptable. All witnesses, however, are expected to be just (fair), trusted, and testify on what they see/hear (know), not what others might have seen or heard.<sup>25</sup>

A woman's testimony is still regarded half as relevant (trustworthy) as that of a man. The *ulamâ* Hanafi hold a more rigid view than others (but follow the opinion of the 8<sup>th</sup> century *Caliph* Umar ibn al-Khattab); they say that In cases of determining kinship ties based on breastfeeding the only acceptable testimony is by two men; other arrangements of witnesses for them are unacceptable. At the time the Prophet's closest associates, *sahabah* did not object, so a consensus (*ijmâ'*) was established, which subsequently became the basis for Islamic jurisprudence.<sup>26</sup>

Others have argued that as long as a testimony is formulated before the marriage of the (alleged) foster-siblings takes place, the testimony of one man and one woman, or two women are equally acceptable (Maliki scholars; Ibn al-Qâsim).

For the scholars from Shafi'i, Hambali and 'Atha a testimony given by four women is perfectly acceptable: less than four makes the testimony invalid.<sup>27</sup> This is partly because breastfeeding is seen as a women's issue. Others have modified this view, saying that a man's and a woman's testimony are equally valid. Regarding breastfeeding/kinship one woman's testimony suffices (according to az-Zuhri, al-Awza'iy, Thawas, and the story of Ahmad). This view is based on a *hadîth* told by 'Uqbah ibn al-Haritsah, which describes what happened when Ummu Yahya married the daughter of Abi Ihab.

On that occasion a black woman slave came forward and said:

"...really, I have breastfed both of you..."

When this was reported to the Prophet, he forbade the marriage.<sup>28</sup>

It means that in those days, regarding the relation between breastfeeding and kinship a singly woman's testimony was acceptable, who was also a slave. Generally speaking, however, in Islamic legal cases (and regardless of whether this involved breastfeeding/kinship relations) the testimony of one man is seen as equal to that of two women.<sup>29</sup> In religious matters the testimony of 2 women equals that of 1 man (ash-Shafi'iy, *ibid.*, Juz VIII, pp. 335). When women give testimony, or are accepted as witnesses before the court, there have to be (1) not less than 4 women witnesses, (2) who are free, (3) adult, and (4) just/fair (Imam ash-Shafi'i; 'Atâ bin Abi Rabah). []

<sup>25</sup> Ahmad ash-sharbâshiy, *Yas'alûnaka fîy ad-Dîn wa al-Hayât*, Edition V, [Beirut: Dar al-Jayl, s.a.]: 128.

<sup>26</sup> Ibn ar-Rushd, *Op. Cit.*: 30.

<sup>27</sup> Ba'lawiy, *Op. Cit.*: 244-245

<sup>28</sup> Sayyid Sabiq, *op. cit.*, 2<sup>nd</sup> edition, p. 95.

<sup>29</sup> Abdurrahman al-Jaziriy, *Op. Cit.*, Juz II; pp 271-277. Imam ash-Shafi'i also requires that witness/es have to be [1] not less than 4 women, and they must be [2] free, [3] come of age, and [4] just. This is the opinion of 'Atha bin Abi Rabah. Based on ash-Shafi'iy, *ibid.*, Juz VIII, pp. 335. Allah SWT allows the testimony of women in religious matters with 2-to-1 woman to man comparison.

# Applied Islamic Jurisprudence in Indonesia 9





**T**he material in this section discusses some of the ways fiqh, or Islamic law and Islamic jurisprudence can be found in the every-day life in Indonesian society, particularly where it concerns family law and jurisprudence on women ('s rights and women's lives). The development of Islam and fiqh in Indonesia is presented here as a case-study. The participants focus on the particular situation and subsequent developments in Indonesia, as one of the largest Islamic countries in the world.<sup>1</sup>

The authors describe the position of Islamic law and jurisprudence as part of- or to complement other (so-called 'positive'), or national compilations of law. In Indonesia this issue became relevant when sections of Islamic law and jurisprudence were going to be used as a basis to formulate some of the country's national ('positive') laws, particularly the Marriage Law, Law # 1/1974, the 'Compilation of Islamic Laws'<sup>2</sup> and Inpres ('Presidential Instruction') # 1/1991, which made clear that in reality parts of Islamic law and jurisprudence had already become the legal reference for judges dealing with religious cases in Indonesia's religious courts.



<sup>1</sup> Using the manual in other contexts one could focus on the history and development of Islam in another country instead of Indonesia.

<sup>2</sup> *Kompilasi Hukum Indonesia / KHI*, 1991.



## OBJECTIVES

After this session the participants are able to.....

- understand the history and some of the Islamic ideas as they developed in Indonesia;
- understand the cultural influence that was part of those who introduced Islam in Indonesia, and the way it developed here, including those cultural backgrounds;
- understand the complexities of the contact between Islamic law and Indonesian politics, particularly where this has led to the discrimination of women;
- recognize which Islamic legal decisions in Indonesia are discriminative for women, and which ones are not;
- recognize some of the more progressive ideas in the Indonesian Islamic legal field as seen from the context of defending women and women's rights.



## POINTS FOR DISCUSSION

- The history of Islam in Indonesia:
  - ~ Who were instrumental in proselytizing Islam?
  - ~ When did Islam first come to Indonesia?
  - ~ How did it arrive in Indonesia?
  - ~ Where did it first arrive in Indonesia?
  - ~ Which were the dominant ideas introduced at the time?
- Relation between Islamic law and (local) culture: the influence, the search for forms and formulations, the implementation of rules and final jurisdiction;
- Islamic law and contemporary Indonesian politics: the case of *Kompilasi Hukum Islam*, or 'Compilation of Islamic laws';
  - ~ Law #1 / 1974,
  - ~ *Instruksi Presiden / Inpres* (Presidential Instruction) # 1 / 1991;
- The ideas of *Syekh Arsyad al-Banjari*;
- The ideas of *Hasbi Ash-Shiddiqie*;
- The ideas of *Hazairin*;
- The ideas of *Munawwir Sadzali*;
- The counter-legal draft of *Kompilasi Hukum Indonesia* / 'Compilation

of Islamic laws': its content and theological arguments.



## METHODS

Film Discussion based on the film; lecture, followed by questions-and-answers; group discussions; general discussion. (Film- *Wajah-wajah Muslim Indonesia*, Media Alliance, July 2004)



## TOOLS

Sticky cloth; markers; plain paper; cello tape.



## TIME

6 Hours.



## STEPS

### *First stage (1½ hours):*

1. Explain to the participants that they are going to learn about Islamic law as it is being practiced in Indonesia. Starting from its earliest history, its characteristics, its local and regional varieties, and the ways in which Islam is practiced by Indonesian Muslims.

The participants are invited to watch the film '*Wajah-Wajah Islam Indonesia Seri 1; Masuknya Islam ke Indonesia*' ('Faces of Islam in Indonesia, I; The arrival of Islam in Indonesia').



2. After the film is finished, the participants are asked to define the characteristics of Islam in Indonesia. The facilitator collects the various viewpoints.

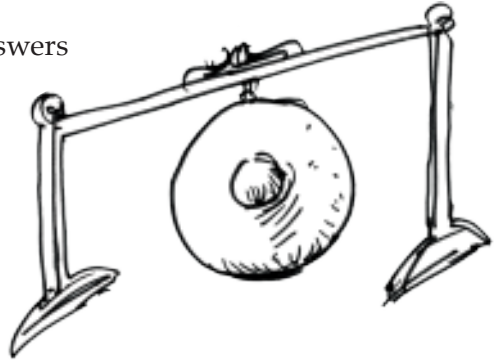
### *Second stage (1 Hour):*

3. Based on the conclusions formulated by the participants previously, the facilitator now asks the invited speaker/expert to explain

Islamic law in Indonesia, discussing its history, development, and characteristics.

*Third stage (1 Hour):*

4. This involves a questions-and-answers round, in which the participants are invited to ask questions, comment, give suggestions and otherwise discuss elements that were presented in the speaker's lecture. The speaker sits with the participants, answering their questions and comments.



*Fourth stage (1 Hour):*

5. Divide the participants in 5 groups. The members of each group discuss a crucial issue from the Marriage Law and the 'Compilation of Islamic laws'. Each group addresses 2 topics, chosen from all the topics made available earlier.

Their discussions should answer the following questions:

- a. Which crucial problem arises from this topic?
  - b. What is your group's comment on the solution offered by the 'Compilation of Islamic Laws'?
  - c. What are the theological and/or other arguments with which we might solve the problem as formulated in this topic?
6. Present the findings of each group.

*Fifth stage (1½ Hour):*

7. Based on the findings of the various groups the facilitator invites the speaker/expert to present the configuration of rules (decision making process) as used in Indonesian Islamic law, while focusing on the position of women according to these legal rules. Use the diagram as used previously, in chapter 8 (Illustrations 11 and/or 12)
8. The speaker/expert invites the participants to formulate more

questions, comments, suggestions on the presentation; the speaker/expert answers the questions and gives a reaction to further comments, suggestions etc from the participants.



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- R. Michael Feener and Mack E. Cammack (ed), *Islamic Law in Contemporary Indonesia; Ideas and Institution*, (2007: Harvard University Press).



### **Notes for the facilitator:**

- ✓ *The recommended film 'Wajah-Wajah Islam Indonesia Seri 1; Masuknya Islam ke Indonesia' could be replaced by any other film that focuses on the arrival and subsequent development of Islam in Indonesia, as long as it addresses such topics as the dominant character and characteristics of Islam in Indonesia, the interaction between Islamic law and local Indonesian cultures.*
- ✓ *Provide copies of the 'Compilation of Islamic laws'-draft, suitable for what the participants need for their discussions.*

## *Madhhab Fiqh in Contemporary Indonesia*

Main representative	Main theme	Purpose	Basic outline of ideas	Proposed Methodology	Implementation in the field of...	Results of Ijtihad
<b>Hasbi ash-Shiddieqy</b> Lecturer; Professor in Islamic Law; leading expert in various fields of Islamic studies; works for the government.	<i>Fiqh</i> in Indonesia	<i>Fiqh</i> in Indonesia should be suitable for Indonesian society, in accordance with local character ( <i>tabi'at</i> ) and culture. Indonesian customs should become integrated in Islamic law, in order for it to become suitable for Indonesian society.	Adaptability of Islamic Law: Emphasizing <i>ijtihad</i> ; (Re-contextualization of Islamic Law; Beneficence based on justice as Islamic Law's basic objective; Liberalization of Islamic Law)	<ul style="list-style-type: none"> <li>- Contextualization of classic <i>mazhab fiqh</i> using a comparative method, including the various <i>mazhab</i>, customary law and positive law, and based on a socio-historic, cultural approach.</li> <li>- Direct interpretation of <i>nash</i>, using a way of thinking that integrates an inductive-deductive perspective.</li> </ul>	Legal status of Indonesia's MTQ; men and women shaking hands giving alms ( <i>zakat</i> ) etc.	<ul style="list-style-type: none"> <li>- MTQ is not allowed</li> <li>- Shaking hands between men and women is allowed;</li> <li>- <i>Zakat</i> should be regulated on a national level;</li> <li>- Non-Muslim should also be convinced to give alms/donations (<i>zakat</i>);</li> <li>- Taxes and <i>zakat</i> are not the same, but identical.</li> </ul>

Main representative	Main theme	Purpose	Basic outline of ideas	Proposed Methodology	Implementation in the field of...	Results of Ijtihad
Hazairin, Lecturer; Professor in Islamic Law and Culture ( <i>Adat</i> ); works for the government.	<i>Fiqih Mazhab</i> on a national level.	Efforts are made to unite local cultural, customary values and Islamic law, by searching for ways to balance the two, in such a way that it becomes appropriate to implement Islamic Law in Indonesia	Adaptability of Islamic Law in Indonesia: (Emphasizing mutual agreement ( <i>ijtihad</i> ); Contextualization of Islamic Law; Beneficence based on justice as Islamic Law's main purpose; Liberalization of Islamic Law)	<ul style="list-style-type: none"> <li>- Re-interpreting authentic texts, using some basic outlines from Anthropology.</li> <li>- Contextualization of classic <i>mazhab fiqh</i> by way of developing (exploring) <i>mazhab Syafi'i</i>.</li> </ul>	Family systems and inheritance.	Islamic inheritance laws should adhere to a bilateral system; The concept of ' <i>asabah</i> ' should not always be maintained; In tracing one's heritage the mother's as well as the father's line should be recognized; An inheritance expert should be involved in Islamic inheritance cases.
Munawir Sjadzali/ Diplomat; Minister of Religious Affairs; bureaucrat, works for the government; Professor in Political Islam.	Re-actualization of Islamic concepts.	To make an effort at re-contextualizing Islamic concepts by way of re-interpreting Islam's religious doctrines. In this way Islamic Law will regain its relevance	Adaptability of Islamic Law. (Emphasizing mutual agreement ( <i>ijtihad</i> ); Contextualization of Islamic Law; Beneficence based on justice as Islamic Law's	<ul style="list-style-type: none"> <li>- Reconstruction of interpretation by way of re-reading <i>nash</i>, and using the hermeneutics that are defined within it;</li> <li>- Existing <i>ushul fiqh</i> could be made to serve as a 'spare part'</li> </ul>	Status of women in inheritance cases; interest as is usual in banks; political Islam.	Sons and daughters have the right to a similar part of an inheritance, equal in value; Interest from banks is acceptable; Women can be (political) leaders.

Main representative	Main theme	Purpose	Basic outline of ideas	Proposed Methodology	Implementation in the field of...	Results of Ijtihad
		(meaning; importance) as seen in the light of change, avoiding its potential for developing conflict.	main purpose; Liberalization of Islamic Law	- and assist in the efforts to reach an independent <i>ijtihad</i> .		
Masdar Farid Mas'udi/ Head of <i>pesantren</i> ; activist in various social NGOs. Active in the political organization NU.	Religion of Justice	Efforts to revive Islam's social ideals, by way of emphasizing and reformulating the basic elements and values of beneficence, social justice, and human rights (egalitarianism) in to the edifice of legal Islamic thinking - <i>fiqh</i>	Adaptability of Islamic Law. (Emphasizing mutual agreement ( <i>ijtihad</i> ); Contextualization of Islamic Law; Beneficence based on justice as Islamic Law's main purpose; Liberalization of Islamic Law)	- Re-interpretation and reconstruction of the concept of <i>qath'i-zanni</i> ; applying the hermeneutics within it; regarding Islam's basic concept of beneficence as a principle as well as a method that support the efforts of re-interpretation and reconstruction.	<i>Zakat</i> (giving alms) and taxes; women's reproductive rights.	Integration of <i>zakat</i> (alms) and taxes; women have equal right in the field of sexuality as men; gender equality; as a result of that: women are allowed to become (political) leader/president.

**Jurisdiction on marriage,  
divorce, and *farâid* (inheritance):  
comparing the various Islamic countries.**

**Wali (Legal representation at marriage):**

*Madzhab Hanafi*: An adult woman does not need a legal representative when she gets married.

Pakistan: According to a decision taken by the *Syari'ah* Court to have a representative is not a legal condition for a marriage

Indonesia: A marriage is not considered legal when there is no representative, either directly (someone belonging to the marrying party) or indirectly (*wali hakim*).

**Ta'lîq (Marriage agreements):**

In Indonesia: *Ta'lîq* is read by the groom after signing the marriage license, according to a standard set of formulations prepared by the Department of Religious Affairs. However, the bride can still express specific *ta'lîq*.

In other Middle Eastern countries *ta'lîq* is usually expressed by the bride, formulating some of the rights that she will be entitled to after her marriage, such as the right to work, to continue her education and other rights.

**Polygamy**

Tunisia: Polygamy is prohibited in the grounds that a man can never guarantee that he can treat his wives fairly and equally: this is based on QS *An-Nisa*:129.

In Saudi Arabia, Syria, Jordan, Marroco, Egypt and Lebanon a woman can make a statement that:

- ~ she won't accept her husband to marry another woman;
- ~ she has the right to ask for a divorce when her husband decides to marry another woman.

In Indonesia polygamy is in principle prohibited. Civil servants may only adhere to polygamy on the conditions that there is a pressing reason, when one has permission from the court, and when the first wife does not object.

### **Talak Tafwid (A woman's rights in case of divorce, *talak*)**

This refers to a woman's rights to file for divorce as agreed to ('sanctioned') by a husband as part of the nuptial agreements (*ta'liq*), without losing her rights to care for the children from the marriage and guaranteed access to the wealth that was accumulated during the marriage.

In Bangladesh and Pakistan *talak tafwid* is regarded an absolute prerogative which does not need to be sanctioned (by the husband). This right is included in the nuptial agreement.

In India, the Southern Philippines, Northern Africa (*Maghribi*) this might be part of the mutual nuptial agreements.

In the Malaysian Marriage Law this issue is not addressed.

### **Inheritance**

Malaysia: According to *farâid*-law a man receives a share twice as large of an inheritance than a woman.

Indonesia: A woman receives half the share of an inheritance as her male relative (-s). However in many regions a man will give part of his (lawful) share to his woman relative (-s), so that in the end both receive an equal share. Or a parent makes an arrangement before he/she dies that all the children will receive an equal share, in order to come to a just and fair situation.

Egypt: Particularly those who adhere to one of the *madzhab* (*madzhab* Hanafi, *madzhab* Maliki, and *madzhab* Syafi'i) have adopted the regulations from *madzhab* Ja'fari.

### **Harta Gono-gini (Accumulated wealth during a marriage)**

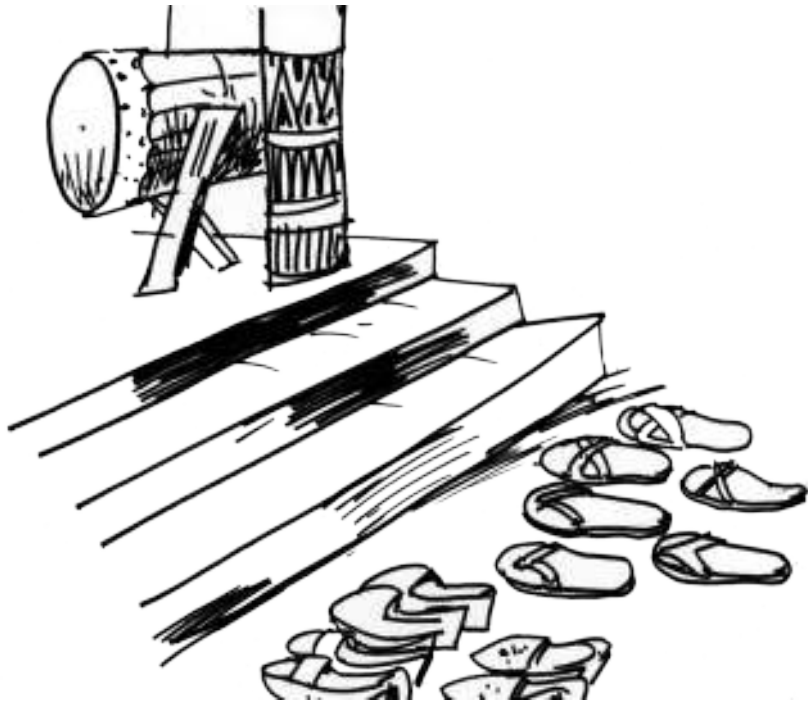
In the Middle Eastern countries and Pakistan: Here there is no acknowledgment of the concept of wealth accumulated during a marriage. A former husband has the right to receive half of the wealth accumulated during his marriage, unless other stipulations were formulated as part of the initial nuptial agreements (*ta'liq*).

In Indonesia a division in three is stipulated: a (former) husband receives 1/3, the children receive 1/3, and the remaining 1/3 is for the children, which is

subsequently given to the person who has been taking care of the children.

In general the accumulated wealth of a married couple is divided in 2 equal shares:  $\frac{1}{2}$  for the (former) husband,  $\frac{1}{2}$  for the (former) wife, irrespective of the wife having worked (i.e. earned some of this wealth) or not.

In Singapore it is stipulated that when the wife has not had a formal job, she is entitled to a share between  $\frac{1}{3}$  and  $\frac{1}{2}$ ; if she has had a formal job it is possible that she receives a share of  $\frac{1}{2}$  or more.



## ***Indonesian Movements for the Creation of a ‘National Madhhab’<sup>1</sup>***

R. Michael Feener

**O**ver the first few decades following the achievement of Indonesian independence in 1945, Indonesian thinkers began a movement that was unprecedented in the history of Islamic law in the modern era: the creation of a new ‘national’ *madhhab* for the Muslim inhabitants of the country.

### **Hasbi Ash Shiddieqy**

Hasbi was born on 10 March 1904 at Lhok Seumawe, Aceh to a family that claimed descent from the Prophet’s close companion, the first Caliph, Abu Bakr al-Siddiq (d. 634). As a member of the Acehnese ‘*ulamâ*’ elite, Hasbi studied the Islamic religious sciences first under his father and then under a number of prominent local shaykhs. During his early studies, Hasbi’s father forbade him to study the Latin alphabet, which he equated with the ‘Dutch infidels.’ Later, however, Hasbi asked one of his friends to teach him the script in order to escape from the disadvantages of illiteracy in this increasingly popular medium. After completing his studies in 1920, he returned home to Lhok Seumawe where he met one of the founders of the reformist journal, *al-Imam*, recently arrived in Aceh from Singapore. Through this connection Hasbi became attracted to reformist ideas and eventually decided to pursue them more systematically at the *al-Irsyad* school in Surabaya (East Java).<sup>1</sup>

Over the next few years, he became increasingly involved with several reformist organizations and educational institutions. During the wartime Japanese occupation of Indonesia, Hasbi assumed a number of significant posts, and after independence he quickly rose through the ranks of the Muslim reformist organization *Masjumi* and also founded a local branch of *PERSIS* at Lhok Seumawe. While engaged in this organizational and educational work, Hasbi was also active in the mass media, regularly writing columns and articles for a number of magazines, newspapers, and journals.

<sup>1</sup> This article is an abbreviated version of ‘Indonesian Movements for the Creation of a ‘National Madhhab’ by R. Michael Feener in *Islamic Law and Society*, Volume 9, No.1, 2002, pp. 83-113). We would like to thank Dr. Feener and Brill Publishers for their kind permission.

However his most long-lasting contributions to Indonesian Islamic thought came about through his involvement with the Indonesian system of State Islamic Studies Institutes (IAIN), which began with his appointment as a lecturer at Yogyakarta (Central Java) in 1951.

By 1960 he had risen to the position of Dean of the Faculty of Shari'a at the IAIN and served as the general coordinator for post-graduate courses in Islamic law for its staff.

Hasbi's connections with the IAIN brought him into increased contact with intellectual currents in the wider Muslim world. One of the most public manifestations of this increasingly warm relationship may be seen in the exchange of prominent honorary doctorate degrees. In 1958, the popular Indonesian author and religious figure Hamka was awarded this degree from al-Azhar. In 1962 the Indonesian IAIN conferred the same honor on the rector of al-Azhar, Shaykh Mahmud Shaltut.

The selection of Shaltut for this distinction reflects not only the political dimensions of contemporary Egyptian-Indonesian relations, but also an affinity of religious orientation between the Azharite Shaykh and the administration of IAIN. In the presentation speech for this honorary degree, Shaltut was praised for being not only a *mufassir* and scholar *fiqh*, but also a 'sociologist' who was in touch with the problems of contemporary society and knew how to address them." Hasbi shared this appreciation of Shaltut with his IAIN colleagues and drew extensively on the works of the Azharite Shaykh and his contemporary countrymen in the formulation of his new model of 'Indonesian *fiqh*.' A careful reading of Hasbi's writings reveals the considerable influence of contemporary Egyptian figures on his thought.

However of all the Egyptian influences upon Hasbi's work, it was that of Shaltut that is most pronounced in his writings on the methodology of Islamic textual reasoning." Shaltut's combination of emphasis on interpreting the Qur'an in its own terms, addressing legal questions in his *tafsir*, and accessibility, appealed strongly to Hasbi. What one observer has said of Shaltut could also be applied to Hasbi, that is, that they both worked to "demystify the Islamic disciplines of *fiqh* and *tafsir* to make them more accessible to lay Muslims." Hasbi also drew on Shaltut's approach to *hadith* as a central aspect of his own interpretive enterprise. In his writings on the application of the *Sunnah* he followed Shaltut in maintaining a distinction between the legally binding and merely customary elements of the *Sunnah*. In doing this, he situated himself in a line of argument stretching backwards through the Egyptian reformer to the renowned eighteenth-century Indian mystic, *hadith* scholar, and jurist Shah Wali Allah al-Dihlawi. This figure was one of the most prominent pre-modern proponents of a distinction between the words and deeds of Muhammad as Prophet, and the routine behavior of his everyday life. This idea was eagerly developed by Shaltut, and it appears that it was through this later reformer that significant elements of Dihlawi's thought were introduced to Hasbi

and his Indonesian audience.

Following a division between *'ibâdât* and *mu'âmalât*, Hasbi observed a basic and pervasive distinction between that which is essentially related to God and that which is concerned with human life on earth. This was in turn reflected in his conception of the humanity of Muhammad in relation to his role as God's prophet. Hasbi distinguished between *hadîth* that are legally binding (*tashrî'*) and those that are not (*ghayr al-tashrî'*, or *al-irshâd*). Through the establishment of this distinction, he could at once do away with certain 'innovations' in religious practice, while at the same time helping to free Indonesian Muslims from imitation of what he regarded as outdated Arabic styles of dress, diet, and personal hygiene.

While Hasbi dealt with the *Sunnah* in nearly everything he wrote, his most concentrated exploration of the study of *hadîth* is presented in his *Sejarah dan Pengantar Ilmu Hadits*. This book is not only an introduction to *hadîth* study, but also a *history* of this Islamic scholarly discipline. Hasbi saw history as critical for achieving a better understanding of Muslim tradition in its relationship to present circumstances and possible future development. This reflects a much larger theme running throughout many of his works: a concern with presenting the historical development of Muslim scholarship in various fields. In doing so he argued for the importance of viewing doctrinal and legal positions in light of the specific historical contexts that conditioned them. According to Hasbi this contextualized understanding of tradition was in turn intended to facilitate its reinterpretation in consideration of contemporary conditions.

True to his PERSIS reformist background. Hasbi saw his works on Qur'an and *hadîth* studies as integral steps toward the purification of revealed Law from the corruptions of human innovation. An important corollary to this was the refutation of unthinking alliance to anyone of the previously established "schools of law" (*madhâhib*). For Hasbi, this critical stance was tempered by an openness to exploring what was useful in the writings of the various existing schools. From this historicized prospective, Hasbi contended that modern Muslims could benefit from a careful selection of previous rulings that are relevant to the contemporary situation. The practice of comparing the rulings of several law schools on particular topics and choosing the most beneficial and appropriate of them is referred to in modern Indonesian jurisprudential discourse as *talfiq*. In the twentieth century this legal device has been used extensively in many countries by Muslims seeking the reform of Islamic law, especially in the area of family law. By Hasbi's time this orientation had already gained significant ground through the work of reformers like al-Maraghi and Shaltut. Maraghi called for a renewed *ijtihâd*, one that would transcend the boundaries of anyone of the established legal schools and thus overcome the limitations of school sectarianism (*madhhabiyya*). His work was continued by Shaltut, who reinvigorated the science of comparative Muslim legal studies with the publication of his *Muqâranat al-madhâhib fi'l-fiqh*.

It is within the context of these complex developments that Hasbi engaged in an attempt not only to transcend established *madhhab* boundaries, but also to construct a new system of distinctively 'Indonesian *fiqh*,' or *Fikih Indonesia*. Hasbi maintained that only by re-conceptualizing the approach to scripture and law in terms of the specific conditions of Indonesian society and the needs of Muslims living therein could Islam remain a vital force in the lives of believers. This required a new jurisprudence that possessed a heightened awareness of the needs and conditions facing contemporary Indonesia while at the same time referring to the Qur'an and the *Sunnah* as its ultimate sources. The raw materials for the creation of such a school also included considerations of local culture and practice, *'urf* and *adat*, respectively. At the same time Hasbi drew upon elements of several historical *madhâhib*, including that of al-Shafi'i, which traditionally has been the predominant school of law in Muslim Southeast Asia.

Hasbi's movement toward the creation of an Indonesian *madhhab* marks a significant turning point in his thought, and, more generally, in the development of Indonesian Islam. For although he was earlier attracted to the scripturalist reformism of PERSIS, he later departed from such positions. Both A. Hassan (the preeminent spokesman for PERSIS) and Hasbi called for a reinvigorated exercise of *ijtihad*, but they understood the term in different ways. A. Hassan and most of his PERSIS colleagues conceived of *ijtihad* primarily as an exercise in which past (mis)interpretations of the law could be identified and eliminated within the process of a "return to the Qur'an and *Sunnah*," to borrow Moenawar Chalil's phrase. Hasbi recognized the relevance of this type of *ijtihad*, but only as a preliminary step toward the reformulation of Islamic law. He argued that after the 'pure' core of authentic law and teachings from the Qur'an and *Sunnah* had been established, it becomes the responsibility of the *mujtahid* to make those laws and teaching more directly relevant to the lives of Muslims living in his society.

For Hasbi, the purification of religious doctrine and law was only the first step in the process of making the law more appropriate to the contemporary situation. From there it would be necessary to contextually apply the law to contemporary local conditions which, for his emerging nation, meant "Indonesianizing" the discourse on Islamic jurisprudence. Hasbi attempted this through an appeal for an understanding of the relationship between *adat* and Islamic law that viewed them in terms of a complimentary, rather than antagonistic, relationship. His discussions of this are in many ways reminiscent of those of his older Egyptian contemporary, 'Abd al-Wahhâb al-Khallâf (d. 1956). This is not to say, however, that Hasbi was 'simply' borrowing yet another brick from the edifice of Egyptian modernism. Rather he was more actively and selectively appropriating certain aspects of it toward a new and distinctively Indonesian aim, the creation of a 'national school of law.' This use of local cultural contextualization in the interpretation and application of 'purified' scriptural precepts represents something new insofar as it was self-consciously understood as not merely another step toward the ongoing reform of Islamic law, but as a creative *national* endeavor to institute a new

legal methodology on analogous footing to that of the established ways of *fiqh*.

Hasbi envisioned the formulation and application of this new Indonesian *fiqh* as being undertaken through a reformulated process of 'collective *ijtihâd*'. He elaborated upon this idea in connection with discussions of *ijmâ'*, and within the context of debates over the nature of the relationship between Islam and the Indonesian State. There Hasbi distinguished between the *ijmâ'* of the early Muslim community and that of his time. He maintained that older decisions based on consensus should be reviewed and that new legally-binding decisions can continue to be made by a body of legislators. In this he combined his 'nationalist' understanding of *ijtihâd* with contemporary reformulations of *shûra*, hoping thereby to establish a more well-defined place for Islamic law in the modern Indonesian nation-state. Hasbi envisioned this to be the work of an organized body of *ahl al-hall wa'l-aqd*, formed from the corps of IAIN graduates that he had such an influence in molding. This, according to Hasbi, would serve as a guarantee against the fracturing of the community and provide for a unified legislation for the national government under the rubric of a specifically Indonesian *madhhab*. Here we find an important intersection between his ideas on legal development of Islam in Indonesian society.

Hasbi based his general arguments in favor of the creation of an Indonesian system of *fiqh* upon his reading of the history of Islamic jurisprudence and its primary development in the first centuries of Islam. He maintained that due to the context in which it developed, certain elements of Arab and Middle Eastern culture established themselves in classical theories of jurisprudence. In short he asserted that much of what traditionally has been considered as 'Islamic law' should actually be thought of as "Arab *fiqh*." Hasbi recognized that the contemporary conditions in which Indonesian Muslims lived posed many new questions, and demanded new answers to old ones, thus necessitating a new and more immediately relevant approach to *fiqh*. Thus he sought to find ways in which the legal and moral precepts of the Qur'an were relevant to contemporary conditions and issues. In this sense, one might talk of a bi-directional movement in Hasbi's approach: first turning back toward the original sources in order to determine the essential message of the law; and then turning toward the contemporary situation in order to determine the appropriate interpretation and application of scriptural precepts to particular cases and conditions. Here one detects a foreshadowing of Fazlur Rahman's approach that would subsequently enjoy an important place in Indonesian Islamic thought.

Hasbi's conceptualization of Indonesian *fiqh* rested upon an historicized understanding of the Muslim intellectual tradition. The various elements upon which he drew included: a reformist-inspired call for *ijtihâd* and critical evaluation of *hadîth*, an openness to the wider tradition of Muslim legal scholarship beyond the confines of anyone particular *madhhab*, and an understanding of the importance of adapting

legal principles and rulings to the actual situation of Muslims living in contemporary Indonesia. In this way he was able to build upon the initial impetus for reform in Indonesia by developing a more ambitious project of reconstructing Islamic tradition in a way that addressed the needs and concerns of a rapidly changing Indonesian society.

### Adat Law and Hazairin

While Hasbi was working on the formation of a distinctively modern and Indonesian system of *fiqh*, parallel developments in the sphere of academic legal studies were being advanced by Hazairin (d. 1975), a Sumatran-born, Dutch-trained scholar of *adat* law. [Although trained in the discipline of adat law, over time] Hazairin turned increasingly toward Islamic religious issues and their relation to his own field of *odor* law. It should be noted that Hazairin had received little or no formal religious schooling in his youth. His knowledge of Islamic religious subjects came largely from self-study rather than the tutelage of a teacher in a more traditional Muslim milieu. Despite this non-traditional background, Hazairin was respected by many as a man of considerable personal piety. He was an anomaly in his time, a Dutch-trained legal scholar in the *adat* law tradition who came to be considered as an advocate for the further Islamization of law in Indonesia. In this his claim to authority rested not on his credentials as an *alim*, but on his personal commitment to Islam.

Not being a 'traditional' Islamic scholar, Hazairin composed no works of *tafsîr* proper, nor did he write in any other of the standard genres in the Islamic religious sciences. Instead he wrote general essays and legal works that were infused with an Islamic spirit. As an outsider who dared to enter into discussions of Islamic law, Hazairin was criticized by the *ulamâ* (whose exclusive territory this traditionally was) for not fulfilling the technical requirements of a *mujtahid*. To such criticisms, however, Hazairin was quick to respond by commenting with sadness on the present state of the Muslim community. He blamed the situation on the way in which Indonesian Muslims had adhered slavishly to the thought of the *ulamâ* of the past, which blocked direct access to scripture and froze its message in a setting no longer appropriate to contemporary contexts. Hazairin attempted to address this problem directly by composing works that approached important issues of Islamic legal interpretation in new forms and formats, especially that of the Western-inspired academic idiom in which he was trained. This led him to concentrate his energies on the composition of creative works on Islamic subjects that went beyond Indonesian translations and adaptations of works and genres rooted in the Arabic tradition.

As a pious Muslim and a professionally trained scholar of *adat* law, Hazairin concerned himself with the relationship between religion and custom in the sphere of law. This remained one of his primary interests throughout his career. To this issue

Hazairin brought a perspective incorporating current conceptualizations of Indonesian nationalism. As he wrote in his essay "Indonesia Satu Masjid," Hazairin hoped that his work would serve to stimulate further thoughts and efforts toward the realization of our goal of, as far as is possible, bringing the structure of our national system into accord with the goals of an Islamic society for the Muslim peoples of Indonesia.

Toward this end he worked on several fronts to promote the reform and reinterpretation of Islamic law in line with the needs and concerns of the emerging Indonesian nation in the face of modernity. This, he insisted, would require some fundamental rethinking of the way in which Islam has been traditionally understood in his society.

In November 1951, Hazairin inaugurated the Muslim College Perguruan Tinggi Islam (PTI) at Jakarta by delivering a speech entitled "Islamic Knowledge and Society. In this address, Hazairin put forward a distinction between 'knowing Islam' (*tahu akan Islam*, i.e. being able to pray, etc.) and 'knowledge of Islam' (*pengetahuan tentang Islam*). He then insisted that 'knowledge of Islam' is what must be most actively pursued in specialized institutions such as the PTI. Hazairin envisioned the graduates of such programs as forming cadres of new *mujtahids* educated not only in traditional religious subjects but also in modern sciences, a combination that would help them to better understand their religion in terms of the living realities of their society. Such scholars, Hazairin continued, were all but absent from the ranks of traditionally trained (*ulamâ*, whom he considered generally unaware and often incapable of comprehending the complex social realities of twentieth-century Indonesia. Hazairin saw the reform and reinvigoration of Islamic law in Indonesia not as an individual matter but rather, as it was for Hasbi, a collective endeavor to be undertaken by representatives of the community in an officially organized body having some determined relationship with the state. It was for this reason that, for example, Hazairin advocated the utilization of local mosque structures in the formation of a *Dewan Fatwa* (Fatwa Council) to issue decisions on questions of religious law and to serve as a parallel body to the government's Representative Assembly. Like Hasbi, Hazairin's ideal was to see a new generation of scholars working within the context of a modern and distinctly Indonesian national *madhhab*. Their task would be one of creating and actively contributing to the ongoing development of an Islamic legal methodology aimed at addressing issues in ways particularly appropriate to both local cultural contexts and national concerns.

Even before Hasbi, Hazairin had called for the formation of a new school of Indonesian Muslim jurisprudence, which he originally referred to as *Madzhab Nasional*. Both Hasbi and Hazairin agreed that the rulings of the new *madhhab* should not only be in conformity with the cultural realities of Indonesia but also should refer back to the Qur'an and the *Sunnah* of the Prophet as its ultimate sources of authority. The construction of this new approach would have been impossible without the exercise of a broad kind

of *ijtihad*, something that was considerably easier to advocate in Indonesia after the pioneering work of earlier generations of Indonesian Muslim reformers. Although he was trained in the 'Westernized' academic background of *adat* law, Hazairin shared with modern Muslim autodidacts like Hasbi and even earlier reformers associated with PERSIS a concern for the reform of Islam and its role in contemporary society. In the introductory essay to his volume on Indonesian family law, Hazairin stated that his views on the bilateral structure of Islamic inheritance law are fundamentally based upon the Qur'an, and intended as a corrective substitution for the prevailing patrilineal model established by the (non-Indonesian) *Ahl al-Sunnah wa'l-jama'ah*. However Hazairin did not limit himself to simply stripping away layers of earlier exegesis from the text of the Qur'an. Instead he went on to construct a new contextualized reading of the relevant texts, one that was grounded more directly in the social realities of his own era and nation.

Based upon his study of *adat* law, Hazairin demonstrated that within Indonesia various communities based their inheritance custom upon three basic models: patrilineal, matrilineal, and bilateral (or "parental"). He argued that the majority of Indonesian Muslim societies tended toward a bilateral organization. For this reason, such a system would best serve as the model for a new, unified system of Islamic inheritance law for the developing Indonesian nation. Noting the discrepancies between such systems and the patrilineal model of Arabian society that had been so influential in the early formulation of Islamic inheritance law, Hazairin contended that the inclusion of certain elements of Arabian customary law should not be considered part of the revealed Law, but simply an historical accident arising from the place and time in which God's last messenger lived. He maintained that in order for the *Shari'a* to become the actual "living law" of Indonesian society, it must be reinterpreted according to current cultural conditions, and not according to some foreign and historically distant situation. This led him to propose a reinterpretation of Islamic law based upon the clear, specific rulings and more general principles of the Qur'an and the *Sunnah*, while simultaneously keeping an eye on their application in a society that included a "parental" (or bilateral) social structure. For, as Hazairin argued throughout his work, "man-made ethics and laws that do not conflict with the general axioms of the religious law remain valid [under Islam.]" Using this contextualizing approach, he maintained a distinction between what he saw as the "eternal laws of the Qur'an and *Sunnah*" and the temporally and culturally restricted glosses on them by the authors of classical works of *fiqh*. In short, what he proposed was the establishment of a new system of inheritance which interpreted and elaborated upon the scriptural precepts of the Qur'an and *Sunnah* in terms of a *bilateral*, rather than a patrilineal, model of kinship.

Through his studies of cultural anthropology and *adat* law, Hazairin attempted to understand the Qur'an in light of the particular needs and concerns of Muslims living in Indonesia. In promoting his agenda of '*ijtihad*,' Hazairin elaborated a critique of

*taqlîd*, which he defined polemically as 'blind imitation' without any solid scriptural foundation and the conflation of adherence to Arabian custom with following Islamic law. One senses a reflection of his specialized training in *adat* law in his distinction between *agama* and *adat*, 'religion' and 'custom,' respectively. In his own words:

Thus it becomes clear that the law of the Qur'an can be exercised in every corner of the Muslim world without making every individual society therein a carbon copy of Arab society, as long as Muslims are able to free themselves from the shackles of *taqlîd* binding them to the ways of the traditional *ulamâ* and the Arab social practices of a thousand years ago and return to the practice of *ijtihâd* themselves. Through this they may reinterpret the religious principles and laws contained within the Qur'an and *Sunnah*, and then go on to reconcile their own particular age and society with those lofty precepts.

Herein can be noted a paradigmatic shift between Hazairin's thought and that of earlier Indonesian Muslim reformers. For even Hasbi, writing at roughly the same time as Hazairin and sharing a similar openness to considerations of local custom in establishing legal rulings, tended to view the issue in terms of the classical Islamic categories of *Sunnah* and *bid'a*. Hazairin recast the discussion in terms of categories that reflected his own training in the Dutch colonial education system and the field of *adat* law, and in terms that went beyond the earlier reformist rhetoric of *bid'a*.

In his evaluation of the relative positions of Islam and *adat* in the field of law, Hazairin argued that religion was to be the measure of the validity of *adat* and not vice versa, as had been the case under Dutch colonial law.

For many of his Dutch teachers and Indonesian colleagues, cultural relativity became a primary basis for legal theory. However, Hazairin's unique position in the *adat* law school was defined in terms of his relationships to both Islam and Indonesian nationalism. The first provided him with an absolute reference for moral and legal values that served as an ultimate anchor for the relative positions of the various traditional legal cultures of the Archipelago. However this still leaves the problem of the multiplicity of local adaptations and interpretations of the Shari'a, which frustrated efforts to create a uniform administration of the country. Where most of the Dutch and Dutch-trained scholars of *adat* law divided the Archipelago into as many as nineteen separate "Culture Areas," Hazairin conceived of the entire nation as sharing a basic core of 'Indonesian' *adat*. In this way he could postulate a single, overarching system of national law whose ultimate moral grounding proceeded from what he perceived to be the eternally valid teachings of Islam, as interpreted according to the needs and conditions of Muslims living in contemporary Indonesia.

In their formulations of the building blocks for an Indonesian *madhhab*, Hasbi and Hazairin differed in a number of significant ways that reflect their respective educational backgrounds. Hasbi immersed himself in the Arabic Tradition of Muslim

scholarship and approached the formation of an Indonesian *madhhab* in a manner that grew out of, yet transcended, the previously existing schools. He took into consideration various opinions on different legal questions from a number of different schools. This approach had a long pedigree in the established sub-disciplines of *ikhtilâf* and *muqâranat al-madhâhib*, and their reconsideration by Muslim scholars from the modern Middle East. Hazairin, on the other hand, approached the issue from the perspective of the particular cultural conditions of Indonesian life, as viewed through his formal training in the Dutch academic tradition of *adat* law.

While on a formal/institutional level, movements for the creation of an Indonesian *madhhab* passed away along with Hasbi, Hazairin, and their generation, the more lasting impact of their attempts for subsequent developments of Indonesian Muslim thought should be recognized. If we follow Geertz in recognizing that "legal thought is constructive of social realities rather than merely reflective of them," the significance of these developments comes more clearly into focus. For in broadcasting the notion that Islamic jurisprudence could be reformed and reformulated along particular 'national' lines, these two thinkers developed a new paradigm of modern Indonesian Muslim thought that drew upon significant aspects of local historical contexts to create a new 'way' (*madhhab*) of conceptualizing an ideal order for society. In developing models of contextualization that sought material for their methodologies both within the Arabic language tradition of Islamic legal scholarship and local cultural conceptions as interpreted within an inherited Western academic tradition, these thinkers forged new paths in Islamic legal thought that have continued to inspire an active discourse for the past half century. The work of both men constitute important contributions toward establishing major trends in the discussions of contemporary Indonesian Muslim scholars and may prove to be integral in shaping the course of future developments in the religious, intellectual, and legal cultures of the world's most populous Muslim nation.[]

# Evaluation and Action-plan 10





In a course aimed at adult education, the final stages, which involve an evaluation (of the course) and a plan of action (for the future) are as important as the introduction. The facilitator (-s) should figure out the best moment and method that can be used, so that the objective of the evaluation can be reached to its maximum. An evaluation is aimed at obtaining an input from the participants to make improvements for any future activities - similar in aim, but in a different place and time. An evaluation does not aim at finding shortcomings only, its outcome goes further than just to give a value – good, or bad.

Ideally all different aspects of the course are discussed, of course critically: the (learning-) process, methods, tools, reference- and other reading material, and the facilities used during the training. We are interested to know if all this suited the hopes and expectations of the participants, or not – and if not, why not. Through an evaluation session all those involved, i.e. the facilitator (-s), the organizing committee, the speakers/experts, and the participants can learn how to improve similar activities in the future.

After such an evaluation there is often a re-discovering of ideas by the participants, which can often be applied as a follow-up of this initial dawrah fiqh (training) for, and about women.





### OBJECTIVES

- The participants learn about the purpose of an evaluation, and can see that it provides the feedback for organizing/following the course.
- The participants are capable to give the members of the organization feedback that is useful for the next training.
- The participants are able to formulate possible alternatives for a next programme, in line with the issues and frame of reference that developed during the training.



### POINTS FOR DISCUSSION

- Evaluation of this course;
- Basic ideas for a follow-up of this course.



### METHOD

Sharing of opinions and ideas.



### TOOLS

Coloured cards (for creating a meta-plan); sticky cloth; markers (as many as there are participants), plain paper, cello tape.



### TIME

90 Minutes.



### STEPS

1. Emphasize the importance of an evaluation and an action plan in each session of the training both for the trainers and the participants.
2. Invite the participants to formulate points for evaluation from the training as a whole. This could include everything that was covered (or, on the contrary, lacking) in the course - such as aspects from the method, the reference material, reaching the objectives, the facilities, the place, etc.
3. Have the participants write their comments, suggestions etc. on plain paper, or the coloured cards (to create a meta-plan) and stick these on the sticky cloth.

4. Ask the participants whether they prefer a written form of evaluation, or an oral discussion of the points for evaluation.

Here the facilitator should have written (printed) evaluation forms ready. If the participants wish to do this in written form:

- ~ The facilitator (-s) should provide either pre-printed evaluation forms or plain paper for the participants to write down their comments, suggestions etc;
  - ~ Allow the participants to finish this activity in 15 – 20 minutes.
5. If the participants wish to discuss their comments, suggestions etc orally, try to decide on someone who can begin this round. Write down on a piece of plain paper the topics that are brought forward.
  6. Repeat steps 4 – 5, but now focusing on a future plan-of-action.
  7. Finally: make an effort to finish this session in a way that is fun, interesting, relevant – anything so that the participants will have some fond memories of this last meeting.

(Note for the facilitator- Make sure you have prepared for this closing activity)

8. Next the participants' comments, suggestions etc. should be discussed with the members of the organizing committee, focusing on the most useful (often the more technical) aspects.



***Notes for the facilitator:***

- ✓ *An oral round of evaluations is usually more interesting, easier, and discussed as a group, together. On the other hand it is sometimes difficult and time-consuming to document well what is being said, discussed, and decided, and one needs to be very precise in order to note everything down.*
- ✓ *Sometimes it works well to combine an oral with a written form of evaluation. However, make sure that this activity does not get boring.*

“... Respectable are those who respect women, and contemptible are those who humiliate women...”  
(Ali bin Abi Thalib)



## GLOSSARY

- Ādah/Adat** : Custom, practice. A local custom which is not in conflict with the Qur'an or the Sunnah (qv.) and which is admissible as part of Islamic law.
- Ām** : The 'general' as opposed to the 'particular' (al-khâss). Terms used by jurists in the complex matter of extracting laws from statements composed as codal propositions. In Islamic scholarship it is termed 'general' (al-'âmm). This refers to a plural concept which distinguishes generality in the term itself and generality in the meanings to which the term may refer.
- Ādl**: Just , justice, equilibrium.
- Āddah**: "Waiting period," usually three menstrual cycles, in which a divorced woman must observe before she is free to remarry. The purpose is to establish whether she is pregnant with her ex-husband's child as if she were to remarry immediately, there is the possibility of doubt regarding the paternity of a child conceived immediately. If she is pregnant, her *'iddah* lasts until the baby is born.
- Āllah**: (plural: 'ilal). Effective cause or *ratio legis* of a particular ruling.
- Āurf**: Local custom which is 'recognizably' good. In the absence of anything to the contrary, derivation of the law from the common and approved mores of a people.
- Āyât**: (plural: ayat). Literally, sign, indication, message; an aspect of God's creation; a section of the Qur'anic text often referred to as a 'verse.'
- Āhādīth**: (singular: hadith). The verbalized form of a tradition of the Prophet, PBUH, constitutive of his Sunnah. A hadith narrative is divided into two parts: the *isnād* (chain of transmission) and the *matn* (content of the narrative).
- Āhād** - isolated: is a *hadith* which is narrated by people whose number does not reach that of the *mutawâtir*.
- Āhl al-Hadīth**: Literally, people of the *hadith*. Refers to scholars who rely on authenticated sayings of the Prophet PBUH.
- Āsbâb al-Nuzûl**: The causes or the circumstances and events surrounding a particular revelation of the Qur'an. Knowledge of the *asbâb al-nuzûl* helps provide an understanding of the original context and intent of a particular revelation. This knowledge is necessary for determining the *ratio legis* of a ruling and whether, for example, the meaning of the revelation is of a specific or of general application.
- Āsl**: (plural: usûl). Root, origin, source; principle.
- Āwâh**: Invitation; call. Refers to the duty of Muslims to invite or call others to return to the straight and natural path of Islam or submission to God.
- Āwâf - weak**: a *hadith* which fails to reach the status of *hasan*. Usually, the weakness is: a) one of discontinuity in the *isnad*, in which case the *hadith* could be - according to the nature of the discontinuity - *munqati* (broken), *mu'allaq* (hanging), *mu'dal* (perplexing), or *mursal* (hurried), or b) one of the reporters having a disparaged character due to his telling lies, making excessive mistakes, opposing the narration of more reliable sources, involvement in innovation, or ambiguity surrounding his person.
- Ādalil**: (plural: adillah). Proof, indication, evidence. Every ruling or judgment needs to be substantiated by the appropriate *dalil* in the first instance from the Qur'an and the Sunnah.
- Āfaqih**: (plural: fuqahâ'). Literally, one who has a deep understanding of Islam, its laws, and jurisprudence; a jurist.
- Āfatwâ**: (plural: fatâwâ). Juridical verdict, legal opinion.
- Āfiqh**: Literally, understanding. The legal science founded mainly on rules and principles developed by human reasoning (*ijtihâd*) and the body of knowledge so derived. *Fiqh* may therefore vary from one jurist or school of thought to another. The term "*fiqh*" is sometimes used synonymously with *Shari'ah* (qv.). However, while *fiqh* is to a large extent the product of human endeavor, the *Shari'ah* is closely related to divine revelation and knowledge which is only obtained from the Qur'an and the *Sunnah*.
- Āfitnah**: temptation to commit a forbidden act, any affliction which may cause man to go astray and to lose his faith in spiritual values; test, trial, confusion, civil war, oppression.
- Āhadīth**: traditions, sayings and deeds narrated from the Prophet Mohammad PBUH.
- Āhadīth Qudsi**: (literally "sacred *hadith*") A *hadith* containing

words of Allah that were narrated by the Prophet (PBUH), but which do not form part of the Qur'an.

**Hajj:** pilgrimage to Makkah, performed once a year during the Islamic month of *Dhu'l-Hijjah*; this is one of the pillars of Islam, and should be performed once in a lifetime by every Muslim who is able to do so.

**Halâl:** lawful, permitted, (contrast to *haram*)

**Harâm:** unlawful, forbidden by *shari'a* law, prohibited.

**Hasan** - good: is the one where its source is known and its reporters are unambiguous.

**Hijâb:** the Islamic dress-code and related attitudes. Although the word "*Hijab*" is often used by English-speaking Muslims to refer specifically to the head-covering, it in fact refers to the whole dress-code.

**Hijrah:** Migration. The *hijrah* refers to the Prophet's journey from Macca to Madina in the month of *Rabi' al Awwal* in the twelfth year of his mission, corresponding to June 622 AC. The Islamic calendar begins from this event (AH)

**Hijri:** Pertaining to the *hijrah*.

**Hujjiyah:** Producing the necessary proof or authority to validate a rule or concept.

**Ijmâ'**: Consensus of opinion. Usually defined as the unanimous agreement of the *mujtahidoo*n of any period following the demise of the Prophet Muhammad on any matter. As such, it is described as collective *ijtihâd*.

**Ijtihâd:** Literally, striving and self-exertion; independent reasoning; analytical thought. *Ijtihâd* may involve the interpretation of the source materials, inference of rules from them, or giving a legal verdict or decision on any issue on which there is no specific guidance in the Qur'an and the *Sunnah*.

**Ikhtilâf:** Difference of opinion; disagreement; dispute; controversy.

**Isnâd:** "Chain of authority," the chain of people who conveyed a *hadith* from the Prophet (PBUH).

**Istihâb:** Juristic preference - the abandonment of one legal ruling for another which is considered better or more appropriate to a given circumstance.

**Istinbât:** Inference. Deducing a somewhat hidden meaning from a given text. The process of extracting laws.

**Istishâb:** Presumption of continuity, or presuming continuation of the status quo ante. For example, *istishâb* requires that once a contract of sale, or of marriage, is concluded it is presumed to remain in force until there is a change

established by evidence.

**Jihâd:** Literally, striving. Any earnest striving in the way of God, involving either personal effort, material resources, or arms for righteousness and against evil, wrongdoing and oppression. Where it involves armed struggle, it must be for the defense of the Muslim community or a just war to protect even non-Muslims from evil, oppression, and tyranny.

**Khâs:** The particular as opposed to the general (*'âmm*).

**Khabar al-âhâd (khabar al-khas):** A solitary hadith reported by a single person from the Prophet. Also called *hadith Âhâd*. *Khabar* means news or report.

**Khalifah:** (plural: *khulafâ'*). Steward, vicegerent; successor. Man is referred to as the *khalifah* or steward of God on earth. The word *khalifah* was used after the death of the noble Prophet Muhammad to refer to his successor, Abu Bakr, as head of the Muslim community. Later it came to be accepted as the designation for the head of the Muslim state. Anglicized as caliph.

**Khilâf:** Controversy, dispute, discord.

**Khilâfah:** Stewardship, vicegerency; successorship. Office of the head of the Muslim state. Also the designation of the political system of the Muslim state after the noble Prophet.

**Khilafah fi al-Ard:** The concept that human being is a vicegerent of God in the earth.

**Madhhab:** (plural: *madhâhib*). Literally, way of going. School of thought.

**Mahram:** a man whom a woman may never marry because of the degree of closeness of the blood-relationship, i.e. father, brother, son, uncle, etc. A woman is not required to observe hijab in front of her *mahram*.

**Mandûb:** Recommended.

**Mash'hûr:** famous: *hadith* reported by more than two reporters.

**Maslahah:** (plural: *masâlih*). Considerations of public interest. It is generally held that the principal objective of the *Sharî'ah* and all its commandments is to realize the genuine *maslahah* or benefit of the people.

**Maslahah Mursalah:** (plural: *al masâlih al mursalah*). A consideration which is proper and harmonious with the objectives of the Lawgiver; it secures a benefit or prevents a harm, but the *Sharî'ah* provides no indication as to its validity or otherwise. For example, the Companions decided to issue currency, to establish prisons, and to

impose a tax on agricultural lands despite the fact that no textual authority could be found for these measures.

**Mawdû'**: fabricated or forged: is a *hadith* whose text goes against the established norms of the Prophet's sayings, or its reporters include a liar. Fabricated *hadith* are also recognized by external evidence related to a discrepancy found in the dates or times of a particular incident.

**Mujtahid**: (plural: Mujtahidun). One who exercises *ijtihad* (qv.).

**Munkar**: denounced: is a *hadith* which is reported by a weak narrator, and whose narration goes against another authentic *hadith*.

**Muqallid**: One who follows or imitates another, often blindly and unquestioningly.

**Mut'a/Mot'a/mot'ah** : temporary marriage (recognized in *Shi'i* law only)

**Mutashâbihât**: Allegorical. Refers to verses (*âyât*) of the Qur'an which are expressed in a figurative manner in contradistinction to *âyât muhkamât* or verses which are clear in and by themselves.

**Mutawâtir**: Consecutive: is a *hadith* which is reported by such a large number of people that they cannot be expected to agree upon a lie, all of them together.

**Nâsikh**: (active participle). Refers to the passage which abrogates or supersedes the part which is abrogated. The abrogated passage is called *mansukh* (passive participle).

**Naskh**: Abrogation of certain parts of the Qur'anic revelation by others. The principle is mentioned in the Qur'an: "None of Our revelations do We abrogate or cause to be forgotten, but We substitute something better or similar" (2: 106).

**Nas**: (plural: nusûs). Text. A clear textual ruling or injunction from the Qur'an and the *Sunnah*.

**Qat'î**: Definitive, unequivocal; free of speculative content.

**Qawwâm**: protector, maintainer.

**Qiyâs**: Analogical deduction or reasoning. Recourse to analogy is only warranted if the solution of a new case cannot be found in the Qur'an and the *Sunnah*. Analogy then consists in extending a principle (asl) derived from the Qur'an and the *Sunnah* to the new case. Analogical deduction cannot operate independently of the *nusus*.

**Sadd al-Dharâ'i'**: Literally, blocking the means. Implies blocking the means to an expected end or an evil which is likely to materialize if the means towards it is not

obstructed. For example, illicit privacy between members of the opposite sex is blocked or made unlawful because [of the prohibition of adultery - ed. (missing text)].

**Sahâbah**: Companions of the Prophet.

**Sahîh**: sound. Imam Al-shafi'i states the following requirements for a *hadith*, which is not *mutawâtir*, to be acceptable "each reporter should be trustworthy in his religion; he should be known to be truthful in his narrating, to understand what he narrates, to know how a different expression can alter the meaning, and to report the wording of the *hadith* verbatim, not only its meaning".

**Salaf**: the early generations of Muslims, i.e., the Companions of the Prophet (PBUH) and the generation immediately following them.

**Sunnah**: Literally, a clear path or beaten track. Refers to whatever the Prophet said, did, agreed to, or condemned.

**Tâbi'un**: Literally, followers. The generation of Muslims immediately after the Companions (.Sahâbah).

**Tafsîr**: Commentary, exegesis of the Qur'an.

**Talâq**: repudiation, unilateral divorce exercised by men.

**Ta'wîl**: Interpretation or explanation. Sometimes used synonymously with *tafsîr*. Often used in the Qur'an in the sense of 'final meaning,' 'inner meaning' or 'real meaning' of a happening or statement or thing as distinct from its outward appearance.

**Tawhîd**: Belief in or affirmation of the Oneness of God.

**Usûl**: (singular, asl). Principles, origins. *Usool al fiqh* - principles of Islamic jurisprudence, philosophy of law; the methodology of deriving laws from the sources of Islam and of establishing their juristic and constitutional validity.

**Wâjib**: obligatory, compulsory.

**Wâli**: Guardian.

**Zâhir**: Manifest, apparent, obvious. A word or phrase is described as *zâhir* when it has a clear meaning. It may still however be open to interpretation.

**Zannî**: Speculative, doubtful. The texts of the Qur'an and *Hadith* that have more than one meanings.

**Zina**: Adultery, fornication.



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## BIOGRAPHIES

**K.H. HUSEIN MUHAMMAD**, born in Cirebon (West Java) on May 9, 1953. He received his elementary and secondary education at the *pesantren*, a (rural) Islamic school in Lirboyo, Kediri (East Java), which he finished in 1973. He continued to study at the Islamic institute for higher education in Jakarta, at the *Perguruan Tinggi Ilmu Al-Qur'an/PTIQ* or 'Institute for the study of the Koran', which he finished in 1980. In 1983 he was able to continue his studies in Cairo, Egypt, at Al-Azhar's *Dirasah Khasshah*.

At present K.H. Husein Muhammad is involved as a participant, a speaker, and an honoured expert in various forums, workshops and seminars, both on a national and an international level. His daily activities include a busy schedule in many fields and he is involved in several social organizations: he takes care of his *pondok pesantren* (Islamic [boarding-] school), the mosque, he is a representative of N.U.'s socio-political organization, he is active in the organization that supports and prepares (prospective) *haji's*, and he holds positions in various educational foundations and NGOs, such as *Rahima*, *Puan Amal Hayati* and the *Fahmina*-institute.

He is a prolific writer and his publications include a great number of books and articles, most of which focus on the question of religion, religious education, and religion in relation to gender. Some of the more comprehensive titles are "*Fiqh Perempuan, Refleksi Kyai atas Wacana Agama dan Gender*" ['Women and Islamic regulations (*fiqh*), Reflections of religious leaders on the gender discourse within Islam'] (LKIS, 2001); "*Islam Agama Ramah Perempuan, Pembelaan Kyai Pesantren*" ['Islam as a religion supportive of women's roles, (a viewpoint) defended by the heads of Islamic schools'] (LKIS, 2004); "*Spiritualitas Kemanusiaan Perspektif Islam Pesantren*" ['Human spirituality as seen from the perspective of Islam as taught and practiced in Islamic schools'] (Fahmina-institute/Pustaka Rihlah, 2006).

**FAQIHUDDIN ABDUL KODIR**, born in Cirebon (West Java) in 1971. From 1983-1989 he went to a (rural) Islamic educational center, *Dar al-Tauhid* in Arjawinangun, Cirebon (West Java) where he studied under the spirited guidance of *Syaikh* Abdurrahman Ibnu Ubaidillah Syathori and K.H. Husein Muhammad. In 1996 he obtained his university degree from the Faculty of Islamic Law (*Syari'ah*) at the University in Damascus, Syria,

and continued his studies in Malaysia, at the Faculty *Ilmu Wahyu* of the International Islamic University (1999). After his return to Indonesia he worked for the Rahima Institute in Jakarta as a researcher and guest-editor of the institute's regular publication, '*Majalah Swara Rahima*'. He is also involved in the Forum for the Study of *Kitab Kuning* ('the Yellow Book': the material used for teaching in most Islamic religious educational centers), a renowned think-tank in Ciganjur strongly associated with Indonesia's former First Lady Mrs. Shinta Nuriah Wahid. He is a lecturer on *hadits* (texts pertaining to the acts, thoughts, and decisions of the Prophet) at the Institution for Higher Islamic Education (STAIN) in Cirebon, and has been appointed Secretary General of the Rahima Institute.

He has written a number of books, many of them on gender relations; these include the following: *Shalawat Keadilan: Relasi Laki-laki dan Perempuan dalam Teladan Nabi* ['In praise of justice: Gender relations as exemplified by the Prophet'] (Fahmina, Cirebon, 2003); *Bangga menjadi Perempuan; Perbincangan dari Sisi Kodrat dalam Islam* ['Proud to be a woman; short discussion from the perspective of predestination in Islam'] (Gramedia, Jakarta, 2004); *Reinterpretasi Penggunaan ZIS* ['Reinterpretation of using Z.I.S.'] (Pirac, Jakarta, 2004); *Memilih Monogami* ['In favour of monogamy'] (LKis, Yogyakarta, 2005). A more political publication on present-day regional government is his *Bukan Kota Wali; Relasi Rakyat dan Negara dalam Pemerintahan Kota* ['Not the city of the proselytizers; the relation between the people and the state in city administration'], (Kutub Fahmina, Yogyakarta, 2006); and the alluring *Dan Nabipun Memihak Perempuan* ['And even the Prophet sides with women'], (Rahima, Jakarta, 2006).

**LIES MUSTAFSIRAH MARCOES NATSIR**, born in Ciamis (West Java; Feb.17, 1959) Lies Marcoes-Natsir received her higher education at and obtained her degree from the Faculty *Ushuluddin* of the Institute for Higher Islamic Education (IAIN) in Jakarta in 1985. She became active as a researcher of women's issues and published a study on women in agrarian production processes: *Perempuan Pemetik teh, Perempuan Penyadap Karet (Sukabumi)* ['Women tea pickers'; 'Women rubber tappers' (Sukabumi)]; *Perempuan dan Pola Kemiskinan* (Bandung) ['Women and patterns of poverty' (Bandung)]. She joined a leading Indonesian NGO, Kalyanamitra, to set up gender analysis training sessions. In the wake of the international Cairo Conference (1995) she joined a progressive Islamic NGO active in the field of (traditional) Islamic education, *Perhimpunan Pengembangan Pesantren dan Masyarakat/P3M*, where she first set out to develop a prestigious and so far relatively successful programme to support the improvement of women's rights and reproduction. The programme, known as *Fiqh An-Nisa* ('Regulations supporting the rights of women') was seen as a basic concept for the development of gender issues and-, or in Islam in Indonesia.

Currently she is the only person in Indonesia who qualifies as a trainer in adult

education, providing training and (religious) education from a gender perspective. Her research results have been published in Indonesia as well as abroad, and include titles such as *Mubalighat as Mediators in Religion* (in: *Women and Mediation in Indonesia*; KITLV, Leiden University, 1992); *Women's grassroots movement post reformasi in Indonesia* (in: *Women in Indonesia; gender equity and development*; ANU Canberra, 2002); *Where Were the Women? Women and inter faith Dialogue in Indonesia* (in: *Asian interfaith Dialogue*; RIMA, Singapore, 2003).

**MARZUKI WAHID**, born in Cirebon, West Java (Aug. 20, 1971) M. Wahid received his primary and secondary education at the Islamic (boarding) schools *Rawdlatut Thalibin* in Babakan, Cirebon and *Al-Munawwir* in Krapyak, Yogyakarta (Central Java); he finished his MTsN there in 1986. He got his masters degree (S1) at the Islamic Law Faculty (*Syaria'ah*) at the Institute for Higher Islamic Education IAIN Sunan Kalijaga (1995), after which he continued his education (S2) at the Institute for Higher Islamic Education IAIN Syarif Hidayatullah in Jakarta (1998). He is currently preparing a PhD (S3) at the Pascasarjana-programme at the same Institute. Since 1998 he works as a lecturer at the Faculty of Islamic Law (*Syari'ah*) at the Institute for Higher Islamic Education IAIN in Bandung. Currently he also works as Head of the section Research and Scientific Studies of the Directorate for Islamic Higher Education (since 2001). He is actively involved in the *pondok pesantren* from Lakpesdam-N.U. (Jakarta), in the *Klub pengajian Bildung* (Cirebon) and at the Fahmina Institute (Cirebon).

Some of his publications include *Pesantren Masa Depan: Wacana Transformasi dan Pemberdayaan Pesantren* ['Traditional Islamic schools in the future: discourse on the transformation and empowerment of the *pesantren*'] (Pustaka Hidayah, 1998), of which he was the editor; the more politically flavoured *Geger di Republik NU* ['Conflicts in the Republic of N.U.'] (Kompas-Lakpesdam NU, 1999) and *Dinamika NU: Perjalanan Sosial NU dari Muktmarm Cipasung (1995) ke Muktamarm Kediri (1999)* ['The dynamics of N.U.: N.U.'s social road from its 1995 Cipasung-meeting to its 1999 Kediri-meeting'] (Kompas-Lakpesdam NU, 1999). He also wrote a book on Indonesia's third president, Abdurachman Wahid, entitled: *Beyond the Symbols: Jejak Antropologis Pemikiran dan Gerakan Gus Dur* (Rosdakarya-InCReS, 2000). Together with Rumadi he published a book on Islamic rules and obligations in present-day Indonesia: *Fiqh Mazhab Negara; Kritik atas Politik Hukum Islam di Indonesia* ['Islamic regulations as guidelines for the nation: a critique of Islamic political Law in Indonesia'] (LKIS, 2000). Furthermore he was a contributor for the publication *Seks, Tubuh dan Kedaulatan Perempuan; Bunga Rampai Pemikiran Ulama Muda* ['Women's sex, bodies, and independence: a collection of thoughts of some of the younger Islamic scholars'] (Rahima-LKIS, 2001), and *Kritik Nalar Fikih NU* ['Criticizing the logic of N.U's religious regulations'] (Lakpesdam-NU, 2002).

