

Haytham Manna

Islam and Women's Rights

SIHR

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Preface

Thirty-five years after the release of my book *Women in Islam* and 15 years after the first edition of this book, it did not occur to anyone that women's issues are not only exposed to a state of regression that returns us to the past, but would be the first and most important victim of all the disastrous events we are currently suffering. It is well-known that vulnerable groups in society are the first victims in cases of escalating violence and barbarism. There is no doubt that these are the groups that pay the biggest price in dirty wars, the production of acts of extreme violence, the continuation of authoritarianism and the suppression of the most basic expressions of human dignity.

Day after day, events prove that the talk of change, freedom, dignity and revolution has no credibility in the absence of full commitment to the abolition of the concept of a woman needing a man's permission in all matters. Such talk has no credibility absent the full endorsement of the idea of complete equality in rights, duties, and freedom from restrictions developed by humans in the name of tradition and religion to satisfy latent whims born of obsession with power, money and sex. The majority of *Takfiri* (puritanical) teachings are manifested in the emphasis on control over base instincts, the burying of wisdom and rationality, and returning not to the past, but to the law of the jungle.

The third edition of this book is accompanied by its translation into several languages. I am obliged to thank everyone who contributed to the publishing of this book among multiple cultures and its translation into multiple languages.

Geneva 21/02/2015

Introduction

At the peak of the Islamic political movement in the Islamic world in 1980, the book *Women in Islam* was released as a cry in defense of women's rights. Publication of the book came at a time when this issue was neglected by most men and women in order to avoid opening a thorny and sensitive topic. It was only natural that fundamentalist campaigns were waged against the book, but it also faced criticism from a number of progressives and secularists who considered its publication to be provocative. The publisher released a book responding to my point of view. I remember a Christian journalist, an enthusiast of the Islamic movement, demanding *Women in Islam* not be distributed. I also remember that a friend studying at the Lebanese University called me and said verbatim: "As long as the judge [men] is satisfied [with his opinion], what do you care for women?"

For the record, I would like to point out that my interest in the cause of women in Islam precedes the tide of political Islam. In September of 1973, I published a study entitled *The Patriarchal Family in Islam* in *Dirasat Arabiya* [*Arabic Studies*] magazine. I have given several lectures about the cause of women in Syria, Yemen, and Lebanon. This interest is not due to an embrace of socialist ideas as some thought, although it was of course reinforced by my readings in socialism and democracy; rather, my interest was born of personal suffering at the arrest of my father, and thereafter my mother having to financially support her six children working as a teacher. It stems from the difficulties that my friend Mona faced as a university student, because she chose as a life partner someone from another religion. Her suffering ended in tragedy when she paid for her choice with her life, five days after our marriage. It was necessary to suitably honor women who I credit for my nourishment and mental formation and stability. Honoring these women comes not only in the form of poetry and literature, but also by constantly defending the right of every woman to full equality with men, as well as her right to be different from men.

There was no second edition of *Women in Islam*, and all the other copies in circulation are photocopies of the first edition in which even typographical errors were not revised. However, numerous friends asked me for a fuller and revised second edition. When I became determined to fulfill their request last year, I found it more suitable to publish a new book that adds unpublished new research to some of the previous content. In addition, I present my criticism of the weak points in the original edition, in order to

keep the first edition as a separate text that sincerely represents a stage of the author's intellectual growth.

It is not possible to say that *Women in Islam* has been subjected to criticism of substance. Accusations of Eurocentrism in the issue of women's rights means excepting Arab and Muslim women from the most important accomplishment in four thousand years of history achieved by women through an international organization that gathers members and observers from all the nations of the world. I am referring to the Convention on the Elimination of All Forms of Discrimination against Women. I learned of the convention at the time of its endorsement by the UN before the accord came into effect on September 3rd 1981. Certainly, reading this agreement shows clearly that the text demands nothing less than the ratification of its contents by Arab and Islamic States. As for the accusations surrounding the convention's timing, as I explained, it was necessary in my opinion to voice a defense of women at a time when the media of the fundamentalist movement was being deployed to strangle women's rights in the name of religion.

However, there are important points of weakness in the book, the first of which is the failure to clarify the process of the formation of the Islamic ideology hostile to women. Although I have rectified this oversight in my subsequent writings since 1983, this point still requires a review that clarifies the culmination of the process of isolating women from daily life and weakening her role and her voice through religious judicial texts on one hand, and social subjugation on the other.

The second point of weakness is the book's affirmation that no path of reform has provided women with anything of note, and has only confirmed her servitude by searching for soothing expressions that guarantee that women remain numb [to their oppression] (1). Here as well, there is ambiguity in concepts. I used to consider Qasim Amin (as well as Huda Sharawi) to be radical for their views on women's issues; I may have been influenced back then by the writings of Islamists who described these writers as radicals, as well as by my love for this word [radical] because it takes us to the origin of life, i.e. the human being. Therefore the concept of reform includes those who tried to reconcile between the male dominated society and those women's rights that do not "create problems" when defended and do not entail the path of social and religious reform that [truly] defends the rights of women. I have been asked about this issue and perhaps this is a good opportunity to clarify and avoid using the term [reform] in this narrow and limited manner, through a chapter in this book devoted to introducing the theses of these pioneers of reform.

The third point of weakness is my rush to support Omar Bin Al-Khatab's account of the existence of a Quranic verse that mentions [the practice of] stoning and adoption of the practice as a matter of fact carried out during the lifetime of Prophet Muhammad. In my quest to further investigate and delve into the Islamic manuscripts and stories, [I found] there is no doubt about [the importance of] the role of Sheikh Abdullah Al-Alayli, who rejects the very existence of stoning as a method in Islam. Today, I have become more and more doubtful about the existence of a religious text on the stoning of a married man (*muhasan*) or woman (*muhasana*) in the case of having sexual intercourse outside the religiously legitimate framework. The researchers of Islamic history have become supporters of the view that holds that a penalty of such importance having existed, would not have been absent in Quranic text – or the Quran demanded half a stoning for the *Umma* [Islamdom], and what is half of a death penalty?!

* * *

If women are universal as a concept, quoting Ismail Mazhar, then talking about Islam is more difficult and complex. On this subject, it is useful to read what Dr. Muhammad Khatami said, before he became president of the Islamic Republic of Iran: “Which Islam do we want and mean when talking about Islam? The Islam of Abu Dharr? Ibn Sina? Al-Ghazali? Mouhiddin Ibn Arabi? Al-Asha'ris? Sufism? Zaherism? Which one? Indeed, these are all, beyond a doubt, historical testimony to the relativity of human knowledge, even when it comes to religion. Regardless of the religion in which we each believe, we all do not agree with our parents in thought or act. I am not saying that the inevitability of change extends to all things, but that it does extend to most affairs of human existence. Thus, the relativity of reason and life is a fundamental and serious matter” (2).

From this starting point, the title of this book ought to be read on the basis that what is called ‘Islam’ refers to the formative lecture and interpretation belonging to the dominant ideology across the Islamic Caliphate. The Caliphate confiscated this term and called everyone outside the Caliphate an “outsider” (*khariji*), “secluded” (*mu'tazal*), “rejectionist” (*rafidi*) and so forth. In the second decade of the 20th century, Mansour Fahmi called it Islamism, distinguishing it from Islam as a religion (3).

We cannot track the journey of women's rights (and/or men's) only via the mythical and ideological structure of patriarchy, even if this structure crucially affects, and is affected by, the socio-economic structure and socio-political system. It is also necessary to consider certain concepts, in

order to uncover specific situations, such as: “individuality (the possibility for an individual, male or a female, to be independent from society); familial independence (the possibility for a family to exist and continue apart from a closed community or close relatives); discrimination based on differences (the consequences of biological diversity in work, dominance, and traditions: masculinity-femininity; virgin-non-virgin; virginity-non-virginity; second degree relative-first degree relative; relative-stranger); the nature of distributing primary work (man's work-woman's work) and social tasks (the presence or absence of an individual assigned for a certain task); the nature of work (how to complete this, individually or as a group?); simple collaboration in work (everyone doing the same job at once); complex collaboration (each individual does something different at the same time); degree of specialization (the certitude of an individual or a group in a certain task); the work itself (by group effort, paid, or forced labor); the ownership or possession of things, neighborhoods, and expertise (possession or ownership of lands, a well, a spring, or a herd, the owner of a slave or concubines, possession, enforced possession, craftsmanship); and barter and currency and their circulation” (4). Add to this the formation of the state and its relationship with organic social structures, violence, and its impact on gender relations and the enslavement of women, and segregation and integration as two factors that set the nature of work and social roles, and so forth.

It is difficult to consider all of these factors in this study, but I address all researchers in demanding giving women their rights working by the motto “*If you cannot answer all, try to give what you can*”

I have avoided as much as possible the repetition of ideas and data that were mentioned in my study *The Woman in the Battle of the Renaissance*, which is published in the book *The Woman!* and in the book *The Hijab*. Thus, I relieve myself and the reader from many topics that are present in writings by me or by friends with whom I share opinions, seeking to widen the range of discussion and enrich previously issued writing.

In a moment of serenity, Ibn Hazm Al-Andalusi, the dean of the *Zaheriti* school, wrote in *The Ring of The Dove*: “I have watched women and have learned from their secrets what others hardly know, because I was raised in their laps, and grew up between their arms, and have known only them; I did not sit in the company of men until I was at the start of my youth when my face had broken out. They [women] taught me the Quran and read me many poems and trained me in calligraphy. My intellectual effort, since I first became conscious in my very early childhood, was only to get to know their reasons and search for and collect their news.”

Aside from Quranic verses and the *Hadith* [recorded sayings attributed to Prophet Muhammad], a woman is the school, the school of life. If writing is an important factor in breaking up the aura of the divinity of patriarchy and restoring the world's awareness, then life is the ultimate school for comprehending the meaning of women's altruism and the real sense of obtaining their rights. In spite of all the setbacks and difficult moments in female existence, the change in the process of life is like the hands of a clock – sometimes we feel they move slowly and at other times we forget them, but no one can stop them.

Paris - May 16, 2000

Introduction to the Socio-Economic Structure of *Al-Hijaz*

If human history was a book of seventy pages, all that we know and discuss, and that for which we struggle to acquire a vision, is the last page. It is among the calamities of humanity that this last page, from the beginning of recorded history, is a tale written in letters of darkness. The only exceptions are spots here and there that survived this domination. This page records the first instance of human inequality and the first form of social and class oppression – male oppression of the female. The field we deal with here is tracking this oppression at the time humanity entered into what we call civilization, at a certain stage and place.

In the vast sands of the desert, the primitive tribes, in the old Arabian Peninsula and in most parts of the eastern Mediterranean, didn't have the raw materials to move beyond communal property, whatever its concept, nature, and network of relationships. Perhaps the gradual shifting of the Bedouin tribes into the phase of mass slavery, throughout long eras of history and along non-parallel tracts, is the foundation for the coexistence of the several and varied types of Bedouin tribes. Many tribes, since the era before the Great Flood and after Islam, practiced the first communal relationships, and in the context of written history, different forms of gender relations manifested themselves, coming from the pre-historical era. There remained among some Bedouin tribes, islands of the ideology of polyandry and families that fostered women rights and empowered them.

Conflict arose between the tribes in the Arabian Peninsula and on the borders of Syria over water and pasture. Tribes overcame the dearth of necessities of life through the spoils of looting, pillaging, raids, or banditry. This was a phase of domination that may be called “mass slavery”, by which I mean the impossibility of the individual's separation from the group, unless they fit the description of a lone fugitive, bearing resemblance to a stray camel isolated from others due to its illness, to borrow a verse of poetry from Turfa Bin Al-Abd. I include in this term's definition the division of labor between human reproduction and securing the necessities of life, in other words dividing labor between men and women, and the beginning of a social hierarchy based on the practice of raiding, as well as the beginning of captivity. This includes the consequent captivity of women and treating them as the possessions of whichever warriors captured them.

This historical stage (5) corresponded, for the most part, with the sedentary settlement of some tribes and the construction of cities based on ties of kinship.

Human reproduction resulting from the snail-paced development of the forces of production gave this socio-political structure the appearance of [possessing] the fundamental strength of society by considering this structure the source of protection of the individual and a tool to bridge disparities – whether hierarchical or non-hierarchical – inside the insular community of a tribe. While the development of economic status led to the completion of the “cocoon” phase within cities in more than one civilization, starting from Sumer, Accad, and the cities of the Pharaohs, and afterwards the eastern coast of the Mediterranean, the factors responsible for the rise of these cities were often the reason for their absence in the cycle that swallowed raiding societies and the collapse of emerging societies due to new invasions.

There was no outlet for the reciprocal movement of goods until the discovery of agriculture and raising livestock, along with the birth of a clear division of work between nomadism and urbanism.

This process can be observed in numerous periods of history. If we select a three hundred year period in time beginning at the end of the fifth century A.D., we can understand it through a very simple and illustrative example, which is the Bedouin motto: “Peoples are partners in three things: food, water, and fire”. This saying expresses the factors of existence in Bedouin culture, which are energy, water and food. In the first half of the seventh century A.D., Prophet Muhammad literally adopted this *Hadith*, which was given the specific meaning by the first of the *Sahaba* (the close friends of Prophet Muhammad) that all pastoral vegetation and water, since it is the source of life, are not to be owned or sold (“...we have made of water every living thing” - Quran). This also applied to oil used for fire in cities and some rural areas. After a period of time, Ibn Al-Athir addressed this *Hadith*, explaining: “By ‘water’ was meant rain water, springs and rivers that have no owner, and by pastoral vegetation was meant that which is permissible and belongs to no one, and by fire the trees that people cut from what is permissible to make fire”.

This example makes clear this process of acquisition and inequality on the one hand and communalism and collaboration on the other, as well as the transformation from general partnership to the partnership external to ownership and possession. Likewise, we see how the concept of

permissibility (the forsaken, the favored, etc., on the one hand) and the possessed (the divided, the private and the non-permissible etc., on the other) gradually grew.

This small section provides a picture of extremely slow advancement witnessed generally by the Arabian regions of the world during the past seven thousand years.

We must go back to the emergence of the political economy (the moment during which the trading of products began, whether between individuals or between primitive groups).

The emergence of the political economy constituted a radical revolution in terms of production and human reproduction. Of course, this change took place not only in terms of production of the necessities of life, but also in terms of the production of people themselves [reproduction], including all the relations that control human reproduction (gender relations, the status of women, the relationship between parents and children, ties of kinship and affinity, etc.). For with the radical change in the status of human forces of production, came renewed, fundamental changes which dealt with the controversy of the relationship between human reproduction and the production of the necessities of life on the one hand, and the nature of the system of patriarchal values and the foundations on which they are built on the other hand. These changes were directly reflected in the natural and direct relationship between men and women. Amid these changes, products came to be gradually products for exchange, in other words, commodities. This was accompanied by the emergence of the many expressions of distribution, facilitation, and problems of exchange: trade routes, the protection of roads from Bedouins by other Bedouins in return for compensation, raids on convoys and so forth. This transformation came to reinforce the loss of domestic work in the Bedouin community, because of domestic work's social and public nature. With the rise in laws enforcing prices and the concept of value (the value of things and humans) where goods or services of inherent use fell in value before the emergence of exchangeable commodities, these changes converted domestic work to a private service.

This is how the separation of domestic work from the society's general production took place, completing the cycle of women's inferiority through the shaping of the patriarchal family within kinship groups.

How do we notice this change in the Meccan experiment?

The success of Qussay Bin Kilab (beginning of the fifth century A.D.) in controlling Mecca formed the beginning of the centralization of power and political, social and economic leadership in Meccan society on the basis of blood relations with the *Quraysh* tribe. Qussay represented the top of the tribal system in the triumphant, victorious tribe, by collecting all power in his person. He was responsible for providing water, medical care, *Hijaba* [tending to the *Ka'aba*], *Dar Al-Nadwa* [the consultative council], and military brigades – in modern terms, the totality of social, economic, political, military, and religious responsibilities.

Whether or not they knew it, the generation after Qusay, that of Bani Hashem, planted land mines on their own control of Meccan society, which is based on tribal control, when they initiated trade from Greater Damascus and expanded it in every direction. They were starting to tear apart the relations of human reproduction known by Meccan society of the sixth century. We can only say that the conditions which made Mecca an important commercial center situated on a trading route became of utmost importance, laying the groundwork for fundamental change in Meccan society.

Amid the Abyssinian retreat from the Arabian Peninsula and Abraha's failure to achieve the economic and political goals of his campaign, at a time when conflict arose between the Byzantine and the Sassanid empires, as well as internally and with their neighboring countries, and as the Sassanid fleet left the southern Arab coasts, the trade route through Mecca gained distinct importance and Mecca became one of the most important trade centers in the region. The exchange of goods for the provision of the necessities of life, in this fallow country, took on a secondary importance to the gradually and significantly growing socio-economic function of usurious commerce – that “raider” that spread out everywhere like a cancer.

This radical revolution in Meccans' lives, created a new idol called “wealth”. This idol, which was the crown of the Meccan commodities market, entered every aspect of life. The Meccan's largest tribe was dubbed the *Quraysh*, or “one who collects money”, “commerce”, and “earning”, according to Ibn Hisham and Ibn Manzur. The most important component of tribal life at the time (the raid) became, according to custom and law, forbidden, due to its lack of suitability with the flourishing of commerce. Social inequity appeared in Mecca in the ugliest fashion. The capital worth of Abu Bakr who was from the *Quraysh* merchants was forty thousand Dirham while the worth of Zayd Ibn Haritha, who was the servant of the Prophet Muhammad, was four hundred Dirham. However

much the authors of *Al-Isaba*, *Al-Istee'ab*, and *Tareekh Al-'Arab Kabl Al-Islam* may have exaggerated in stating that Ibn Auf released thirty thousand slaves after the arrival of Islam in his life, this claim points to the expansion of the slave trade in this small city which at the time had a population of twenty thousand people.

Buying and selling entered the world of the gods and the *Mou'alaqaat* [lines of poetry that are hung on the walls of the *Ka'ba*] and the world of people and finance. Twenty six varieties of sale and purchase were attributed to the merchants of Mecca, and multiple forms of the exchange of money (usury) became norms of the society. With 13 [already existing] seasonal commercial markets in the Arab Peninsula, Mecca inaugurated *Okaz Souq* to support its permanent market with seasonal markets of literature and goods. Real estate mortgages, commodity credit, written contracts, and brokerage were known to come in all shapes and sizes, which made the author of *Nihayat Al-Irab* say: "The *Quraysh* have come to profit from their commerce Dinar for Dinar." This did not mean that these changes were only awakening people's dark instinct through a law of greed, but also the dominance of the language and dialect of Mecca and the emergence of networks of marriages arranged for commercial purposes, and forming ties with tribal leaders to guarantee the commercial security (*Al-Ilaaf*) [a trade voyage] and the appearance of more than one approach to the monotheistic *Hanafi* school of Islamic thought in the city.

Currency became the main tool in commercial dealing, and monetary and usurious dealing became dominant. The merchants of Mecca emerged as a distinctive class with distinctive features within and outside the relations of human production. The large expansion of slaves (in the Asian meaning of the term), possession, ownership and the cutting up lands all served as the basis of the arrival of Meccan society to a level that forms the objective groundings of civilization – this word which achieved and gave much that the former tribal society was unable to, but only by stirring up the most degenerate instincts and desires in people and killing their natural abilities through a law of greed. Wealth, and wealth first! Wealth again, and wealth always! A *Hadith* attributed to the Prophet Muhammad expresses [this idea], saying: "If a son of Adam [a human being] had two valleys of money, he would wish for a third, for nothing can satisfy the eyes of a son of Adam except dirt."

The entrance fee for civilization drew a new picture of the relations of human production, whether considering civilization as tribal and the totality of forms of broad kinship relations, or in the primary structure of

relations between the two sexes, the patriarchal family, and the situation of women.

Numerous pillars of tribal society fell through the arrival of wealth which was both a cause and subject to marriage and in-law relations, in addition to kin and lineage. The centralization of wealth sometimes followed and sometimes did not follow the tribal pyramid. Women entered the Meccan commodities market as women. They entered the market through the widespread exchange and production of slaves (women and men). Meccan society brought to the level of an art the exploitation and oppression of *Al-Amaa'* [a female slave or concubine]. They participated in housework and presented their bodies to their masters who requested of them sexual pleasure and who possessed the right of deciding the fate of their children from these relations, the right to sell *Al-Amaa'* if she gave birth, and the right to reap the rewards of sending *Al-Amaa'* as prostitutes to whomever they wished. They were also used as objects for the production of slaves in "slave production farms" which were initiated by Meccan society. Their breasts were exploited for breastfeeding, and the beauty of their voices and bodies exploited in taverns and markets.

Whereas *Qurayshi* women enjoyed immunity due to the tribe's sovereignty over the market, many of the non-*Qurayshi* Arab and non-Arab women entered the market of men's pleasure, and used to attach white flags on their laps to let men know of the presence of brothels. Numerous Bedouin women worked as wet nurses for the children of the *Quaraishi* women and merchants in exchange for a fee.

The very ancient tradition of women circumambulating virtually naked around the *Ka'ba* was stripped of its original meaning with the rise of the woman's body as a commodity from among the commodities of the marketplace, this body for which more than forty words were used in Mecca.

As for the Meccan women, we can exclude [from the aforementioned abuses] those whose tribal wealth and rank exempted them, but they suffered major oppression in their relationship with their husbands. Male society possessed the right to divorce them. Women did not have this right, except in the case of the agreement of the man on her payment of a ransom for herself to the husband.

The male-dominated society practiced various forms of sexual oppression, such as divorce, *al'auda athna al'ida* [the woman is forbidden from

leaving the house after divorce from or death of her husband to ensure that if the woman is pregnant, the child is the husband's], *al-ilaa'* (an indefinite period of time during which the woman is forbidden to have sex with her husband in a polygamous family), *al-mokaali'a* (bad treatment and sexual oppression until they pay a ransom), and *al-zihar* (the woman is forbidden from sexual intercourse and divorce for the extent of her life).

Matrimony was neither contractual nor exclusive in this patriarchal form of marriage (where a man asks another man for his daughter or female charge, and if the latter accepts, the former takes her as his wife – according to Aisha Bint Abu Bakr), polygamous (the men from among the *Quaraish* would marry ten women, more or less – Tafsir Al-Tabari 4/156). The society amazes us with its various forms [of marriage]. We witness an overlapping of the old and the new, among which we count:

- *Nikaah Al-Istibdaa'*: The man would say to one of his wives, after her menstrual period was over, “go to whoever [a man] and *stabdiei* [perform sexual intercourse with them in order to become pregnant]”. Then the man would keep her apart and would not touch her at all, until her pregnancy from the other man appears. If the pregnancy did appear, the husband would perform sexual intercourse with her if he wished. *Nikaah Al-Raht*: *Al-Raht* gathers almost ten men to perform sexual intercourse with one woman. If she became pregnant and gave birth, several nights after the delivery, she would summon the men, if they could not come together to her. She would then tell anyone of them that he is the chosen father.
- *Nikaah Sawahibaat Al-Rayaat* [i.e. prostitutes] and *Nikaah Al-Mut'a* [pleasure marriage]: A temporary marriage for money or anything paid to the woman. The time at which the marriage ended was determined beforehand.
- *Nikaah Al-Badal*: One man would say to another, “send your wife to me, and I will send my wife to you”.
- *Nikaah Al-Shighar*: A man would marry off his daughter or female charge to another man, on the condition that the other man would marry off his daughter or female charge to him, without their being a dowry between them.
- *Nikaah Al-Daghine*: If a man took a woman as a captive of war, he could marry her if he wished.
- *Nikaah A-Mmakt* (or *Al-Daizan*): This type of marriage entered the core of the Prophet Muhammad's lineage. It occurs when the son inherits his step-mother as a wife, or marriage with two sisters at the same time. The Quranic verses permitted this with retroactive

legitimization (i.e. whoever preceded the ban is affected by the saying of the Prophet.

- *Nikaah Al-Khedan*: Last but not least is the reaction of a woman to her suppression by taking a lover with whom she is secretly intimate. Stances towards this practice differed, considered between adultery [and the corresponding consequences] and whoever discovered her affair being satisfied with condemning her to house arrest. The Quran mentions this type of marriage under the term “*muttakhathat Al-’akhdan*” [those who take secret lovers], and forbids the practice.

As for divorce, the third divorce [announcing the divorce three times] made the man divorced unambiguously, with no going back, whether he stated, “you are released”, “you are liberated”, “your halter is untied”, or “you are released like this camel” or one of many other expressions the use of which was mastered by men for divorce. And on the cusp of divorce, the author of the *Taj Al-’arous* dictionary says regarding *Al-’adl* [wrongfully preventing women from marrying]: “*Al-’adl* existed among the *Quraysh* in Mecca. The man marries the honorable woman, but perhaps the woman is not compatible, so he separates from her on the condition that she does not marry another without his permission. He brings witnesses to write as such and bare witness. If someone became betrothed to her, she had to have sexual intercourse with her ex-husband; she would then have permission to remarry. If not, then she would not have permission” (*Taj Al-’arous, Al-’adl*, 8/21).

And let’s not [even] talk about a woman’s inheritance in a society where she herself is inherited.

The usurious commercial capital did not achieve a transformation of the entire *Hijaz* and Arabian Peninsula, but only of the commercial cities and their neighboring areas, and [resulted] in the organization of trade caravans. It did not enter the transitional form of the pastoral Bedouin society to tear it apart from within, but rather reached out to this society and offered it payments for non-aggression towards trade caravans, on one hand, and on the other hand limited and insufficient trade. The commercial system entered the agricultural settlements like a bacteria that results in sickness rather than prosperity, impoverishment rather than enrichment. This was due to the Bedouins not possessing the means to resist economically and their need for this commercial system proportionate with the importance of currency in rebuilding local production. Commerce achieved expression in breadth of its usury and its diversity. Trade supplied local production of limited commodities resulting sometimes in self-confinement for protection or sometimes as an expression of distress at

opening up to the market, which was manifested first and foremost in the entrance of forms of individual ownerships and class ranking in the life of the agricultural settlements.

Yathrib (Madina, the Illuminated City, and the first city and capital of Islam) consisted mainly of immigrants. *Al-Aws* and *Al-Khazraj* were two Yemeni tribes that came from an advanced agricultural area. Before their arrival was the immigration of the Jews. It appears, from verses of poetry and different novels, that there was a conflict between *Al-Aws* and *Al-Khazraj* on the one hand, and with the Jews on the other. The majority of the population, at the time of the arrival of Islam, was Yemeni Arab. The *Bani Quraiza* and *Bani Nadir*, who were Jews, occupied the most fertile lands, while *Bani Qainaqaa'* were famous for handicrafts, trade and the market which was named after them. They did not possess land. Several alliances were known in the city based on kinship and neighborhood, such as the alliance between the *AlKazraj*, who occupied the center of the city and its western and southern portions, and, mainly, the *Qainaqaa*, whose houses and *Atman* (multi-story building) and market neighbored the *Al-Khazraj*. On the other hand, was the alliance between the *A-Aaws*, who occupied the east and the southeast, and *Bani Quraiza* and *Al-Nadir*, whose lands were intertwined with those of the *Al-Aws*.

Yathrib depended on agriculture as the basis of the city dwellers' livelihood. Its production consisted of dates firstly and then vegetables, with the help of three valleys for gathering water (*Al-Aqiq*, *Bathan* and *Qanat*). In addition, its people dug wells and built *Al-Masani'* (basins placed to benefit from rainwater).

The use of slaves and freed slaves was found among a small portion of wealthy people in Yathrib (the most distinguished of the heads of the clans and tribes). For the ownership of the lands, the city was divided into agricultural *Rubee'aat* [quadrants]. Each belonged to one clan, and each clan supervised their planting, marketing of the harvest, and organizing the affairs between members of the clan. There is no evidence of individual private ownership. The forms of agricultural work included transitional types of direct use work, paid labor, and slave labor.

As for craft, there was domestic craft for use, and craft meant for bartering or the market. As for handicraft, Yathrib ground grain and made bread (the specialization of women). Spinning was a domestic handicraft of the women; textiles were produced by Arab and Jewish women. The manufacturing of wine was a craft for domestic use or for commercial

exchange for the market and could be carried out by both men and women. Nurses and midwives [offered their services] for barter, currency, or gifts.

Perhaps the most important craft to come out of the market was the craft of precious stones, weapons, and agricultural production tools, in other words jewelry-making and blacksmithing, which were monopolized by the *Qainaqa'a*. The adobe houses and *Atam* of the Jews (53 in total) and Arabs (13 in total) do not shed light on whether the craft of building was a specialized craft. The perfume makers were also found in Yathrib making and selling their products.

It would be unfair to forget those who worked in prostitution for money or for a specific compensation (gowns, fabric, or food) either forced by their owners, or working consensually based on agreement with their clients.

The controversy over the relationship between human reproduction and the production of the necessities of life is clear in the overlapping of a common interest on the basis of blood relations in the totality of social, economic, and political relations – in internal loyalty, solidarity, and tribalism which includes the organization of neighborly relations, alliances, and intermarriage, and in the mode of cooperative labor (irrigation for example), the shared protection of the land, the group's protection of the individual, and the group's responsibility for social security, custody of children based on kinship upon the death of the father, and the linking of the rules of inheritance and blood money to the formation of factions in the kinship group.

As for that which concerns gender relations, women generally participated in social and economic activities such as their work in cultivation and selling outside the house. Also, there was never a total separation of housework as a private service. This manifested in the families of Yathrib nicknaming fathers after their first child, regardless of whether it was a boy or a girl. According to most accounts, women were able to stipulate divorce vis-a-vis their husbands and there was multiplicity of marriage in the lives of the women of Yathrib, which guaranteed ease of breaking the contract of a patriarchal marriage and a lack of difficulty in returning to marriage for widows. Having multiple wives at the same time was not uncommon, especially more than two. It was legitimate for men to have intercourse with female slaves with no shame, punishment, or social ramifications. However, sex outside of marriage with free females (married or single), was punishable especially among the Jews, who enforced confinement to the house in this case (6).

This clear difference between two cities in the *Hijaz* makes it necessary to reject all generalizations that portrayed the Arabian Peninsula as a homogeneous unit.

If there were any Arab achievements in Islam, the most important would be the unification of dialects (with dominance of the northern and the Meccan dialects), the unification of beliefs by Islamizing all that exists and eliminating whatever contradicts the new religion, and the “unification” of the family laws in the Arabian Peninsula upon failure of the tribal assimilation in achieving this unification due to varying lifestyles and beliefs among them and due to a different prevailing socio-political system.

Introduction to the Islamic Perspective on Gender

Muhammad Bin Abdullah was born in Mecca an orphan. He was known to be sincere and honest and worked in herding people's livestock for a few carats. At twenty-five, he embarked on a life as a *Qurayshi* and a husband of a merchant who was revered by people and for whom he worked in trade. Khadija Bint Khuwailed had a fair-sized fortune and tribal rank, just like Ateka Bint Murra, Abd Munaf's wife. She was known for her wealth, morals, and education. She was fifteen years the Prophet's senior.

Perhaps, the most mysterious period of the Prophet's life was that between his twenty-fifth and fortieth years of age. Only a few events here and there was all that Islamic history ever recorded of that period. During those years, the Prophet did not associate himself with monotheists (*Hanafis* according to *Ahl Al-Akhbar* or oral historians) who called for "*Ilah Al-Ghayb, Ilah Al-Sama'a*" [God of the Unknown, God of the Sky], such as Qaiss Bin Saeda, Zaid Bin Amro Bin Nufail, and Waraqa Bin Nofal (7), despite secluding himself in Mecca's caves with them. He was not a prominent public figure, except in a few occasional events after his arrival to Jerash, Bosra, and Jerusalem and meeting with Bouhaira the Monk. Then his moment of "prophecy" came at age forty:

"Recite in the name of your Lord who created"

Muhammad, the Prophet, calls not to the One God, as others who make the Call, but to the Word of God directly. He does not call for reform but declares glad tidings of a new religion. He establishes for this religion, by affirming the idea of oneness [monotheism], a washing away of impure notions associated with a god who gets tired and eats as in the Judaism, or who is embodied in a human being as in Christianity. This religion emphasizes the values of justice and faith through the stories of the prophets and the ancients.

There are two central points absent from my book *Women in Islam* concerning the establishment of the Islamic perspective and Islam's outlook towards the two sexes due to the dominance of Salafism and the fundamentalism in our readings. The first relates to a religious understanding based on a succession of people, every person, to God on earth and honoring people despite all the cruelty in the description of peoples whenever mentioned in the Quran. I warned about this in studies

on women which I published in 1985 and 1986. I was alerted to the second [central point] by reading Mansour Fahmi's book, which is dealt with by Hussein Aloudat in his book *Arab Women in Religion and Society*, about the first sinful relationship between the two sexes:

The concept of the human in Islam goes back to the story of the creation of Adam and Eve in the Quran. The story contained in *Surat Al-Baqara* [The Cow] verses 30-34 says: "And [mention, O Muhammad], when your Lord said to the angels, "Indeed, I will make upon the earth a successive authority." They said, "Will You place upon it one who causes corruption therein and sheds blood, while we declare Your praise and sanctify You?" Allah said, "Indeed, I know that which you do not know." And He taught Adam the names - all of them. Then He showed them to the angels and said, "Inform Me of the names of these, if you are truthful." They said, "Exalted are You; we have no knowledge except what You have taught us. Indeed, it is You who is the Knowing, the Wise." He said, "O Adam, inform them of their names." And when he had informed them of their names, He said, "Did I not tell you that I know the unseen [aspects] of the heavens and the earth? And I know what you reveal and what you have concealed." And [mention] when We said to the angels, "Prostrate before Adam"; so they prostrated, except for Iblees. He refused and was arrogant and became of the disbelievers."

There are three central pieces of information in this story. First is the divine decree to consider the human being as a successor of God. The second is that enough knowledge was given to human beings to [allow them to] surpass the angels. The third is demanding of the angels, who prostrate themselves to God alone, to prostrate in honor of humans under pain of leaving the mercy of God.

These facts form the basis of the Islamic conception of the human being which is reinforced by many [Quranic] verses and *Hadith*, such as verse 70 of *Surat Al-Isra* [The Night Journey]: "And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference." This verse issues the honoring of human beings without any discrimination between believer and infidel, Muslim or non-Muslim, man or woman, Arab or non-Arab. The first verses of *Surat Ar-Rahman* [the Beneficent], says: "The Most Merciful, Taught the Quran, created man, [And] taught him eloquence." These verses are about the virtue of rational knowledge to human beings and its value in honoring humans and their succession to God (8). It is important to restore this conception since the orthodox school in Islam has been keen to

confirm the image of the obedient and submissive human being and struggled against the image of the human as the possessor of free-will and responsibility, which was affirmed by *Al-Mu'tazila* and some of *Kharijites*. The image of the perfect human was also crystallized by Ibn Arabi. The process of the formation of the ideology of obedience in Islam, over the first centuries of the Islamic era, was begun by religious and political perceptions and ended in the slavery of women in her husband's house. During this process was witnessed, with the profound changes that accompanied the rapid military expansion of the Islamic caliphate, a significant decline in the role of women and the urgent need to build a doctrine on the scale of the Caliphate as an expression of official Islam.

Hussein Oudat highlights at an essential point in the first Islamic perception of the relationship between the two sexes. He starts with it what is called *Al-Khati'a Al-Uola* [the first sin], which is contained in the Quran three times:

- 1- In *Surat Al-Baqara* [The Cow] verses 35-36: "And We said, "O Adam, dwell, you and your wife, in Paradise and eat therefrom in [ease and] abundance from wherever you will. But do not approach this tree, lest you be among the wrongdoers." But Satan caused them to slip out of it and removed them from that [condition] in which they had been."
- 2- In *Surat Al-A'araf* [The Heights], verses 19-23: "And "O Adam, dwell, you and your wife, in Paradise and eat from wherever you will but do not approach this tree, lest you be among the wrongdoers." But Satan whispered to them to make apparent to them that which was concealed from them of their private parts. He said, "Your Lord did not forbid you this tree except that you become angels or become of the immortal." And he swore [by Allah] to them, "Indeed, I am to you from among the sincere advisors." So he made them fall, through deception. And when they tasted of the tree, their private parts became apparent to them, and they began to fasten together over themselves from the leaves of Paradise. And their Lord called to them, "Did I not forbid you from that tree and tell you that Satan is to you a clear enemy?" They said, "Our Lord, we have wronged ourselves, and if you do not forgive us and have mercy upon us, we will surely be among the losers.""
- 3- In *Surat Taha* (Ta-Ha), verse 120-121: "Then Satan whispered to him; he said, "O Adam, shall I direct you to the tree of eternity and

possession that will not deteriorate? And Adam and his wife ate of it, and their private parts became apparent to them, and they began to fasten over themselves from the leaves of Paradise. And Adam disobeyed his Lord and erred.” (9).

The writer notes that the responsibility of the first sin falls upon the male and female together in two verses, upon both Adam and his wife, and falls upon only Adam in the third verse. This means Adam was responsible more than Eve for this sin by at least one measure. Thus the woman was not a seducer nor deceptive, nor did she expel Adam from paradise as the *fuqaha'* [Islamic jurists] repeat, relying on Abrahamic doctrines and pre-Islamic folk tales.

The Prophet Muhammad and the Quran do not only establish equality between men and women in terms of their creation, nature, and responsibility (mythological and real), but also in the mutual exchange of the need and the sole attribute of distinction in Islam: piety.

Despite the dominance of the patriarchal perspective in Mecca, women found an ally in the new religion in the face of the masculine impertinence of Mecca at the beginning of the Islamic era. It's not strange that Khadija [the first wife of the Prophet] was the first to embrace Islam, and that the first to be martyred for the sake of the religion was Sumayya, mother of Ammar B. Yaser.

The birth of Islam in Mecca was not able to make of the first Muslims supporters of gender equality. Perhaps the most important exception is the personal life of the Prophet Muhammad in Mecca, where his wife, Khadija, who had a strong personality, was present and active in society and loyal through thick and thin. She supported Muhammad Bin Abdullah when he was alone, nourished him when he was hungry, believed him when he was a liar in the eyes of others, and supported him when he was pursued by the men [of Mecca]. It is useful to read in the thesis of Mansour Fahmi the section concerning the Prophet's wives to realize this side of the Prophet without 'the pressure of the holy revelation' on the simple life of the Prophet as a human being (10).

If we leave religious texts and return to early Islamic life, we would be surprised by the important role of women in calling people to Islam and religious and political debate and by the Islamic position of women. We sometimes feel that there is a real conflict between the privileges of men, which existed and which Muslim men were keen to keep, and the feminist

resistance that tried to seize women's place amid the tide of change that accompanied the emergence of Islam. Although the era of secret struggle and opposition gave women great consideration for their participation in inviting to Islam, protection of the Prophet, their participation in the migration to Abyssinia and participation in the pledge of allegiance of Yathrib women to the Prophet, the role of women objectively declined with the militarization of social life, the wars and raids in early Islamic society (27 raids from the time of the *Hijra* [the migration from Mecca to Madina] to the time of the death of the Prophet Muhammad), and the formation of political power since the Battle of Badr.

Meccans did not migrate as tribes or groups, but as individuals with their spouses, their families, or unmarried. Hence, they carried, whether they liked it or not, the individualization of the Meccan "civilization". Consequently, as they headed out to find a source of sustenance, a good deal of them represented close ties to capitalism rather than to an economy of self-sufficiency, which was a result of individual initiatives rather than a general agreement. The migrating traders' business was described in Abdul Rahman Bin Auf's saying "lead me to the market". Others were able to partake in the communal land's crops upon the Prophet's request to *Al-Ansar* [the people in Yethrab who supported Muhammad] to divide up the land. Therefore, *Al-Sahaba* [Meccan companions of Muhammad] became either traders or farmers. But that did not prevent many poor immigrants from asking to be married to women who worked in prostitution. Perhaps these women could secure income from their profession "until Allah enriches them". This was the first delimitation in the prohibition to marry an adulteress or adulterer in the early times as Al Tabari mentions in his interpretation (11).

Due to the migration to Yathrib, (Madina), Muslims of Mecca adopted more liberal traditions regarding gender relations. As Sahih Muslim narrates, Omar Ibn Al-Khattab said: "We, the people of the *Quraysh*, used to have the upper hand over our women. So when we arrived in Al-Madinah, we found a people whose women had the upper hand over them. Our women began acquiring the habits of their women." There are also dozens of stories about women's work at that time and their participation in debate and public life. And we can't help but ask ourselves, with this fundamentalist discourse about the harem in the first Islamic society, who could imagine that a number of early Muslims expressed a desire to marry women engaged in prostitution, as we pointed out, and that a Quranic verse brought this practice to a halt?

Verse 34 of *Surat An-Nisa'* [The Women] established the prevailing concept of male dominance: "Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand." This verse soon became the building block for the concept of obedience beyond [the reach of] interpretation, rather than emphasizing the nature of that era. Even during the times of the Prophet, this verse was subject to protest by women. One militating female Muslim representing her gender went to the Prophet to ask him about the issue of equality and asked: "I am an emissary from women to you. God has sent you as His messenger to both men and women. We believe in you and your Lord. Yet we, women, are restricted, home bound. We stay in your [i.e. men's] homes and bear your children. You, men, have been favored over us with attending Friday prayer and congregational prayers in mosques, visiting the sick, attending funerals, performing the pilgrimage repeatedly, and with what is more than that: fighting for God's cause. When a man goes out intending pilgrimage, *Umra*, or *Jihad*, we take care of your money, sew your clothes, and bring up your children for you. Do we have a share of your reward?"

Aisha did not refrain from commenting on the Quranic verse that allows Prophet Muhammad to marry whoever he wishes to marry, as she said: "I see in your Lord hastening for your desires"?

Despite the firm attitude of many of *Al-Sahaba* towards them, women participated in the daily struggles of life and the exploration of the nature of Islam. Zainab Bint Jahsh for instance, worked as a weaver and sold her goods, as did a significant number of women. Some women participated in battle, like Om Salim, and others provided nursing care for fighters. They followed the rules of the Quran and its enunciations. Om Salama inquired to her husband, the Prophet, about verses in which any mention of women was absent: "Why are we not mentioned in Quran like men?" Khawla Bint Qays described the essence of the period of prophecy by saying: "We were, in the era of the Prophet, Abu Baker, and most of Omar's caliphate, women praying in the mosque, preparing textile, handicraft, and other products. Omar said: "I wish you to be *harair* (no slaves women)" so we stopped our way of living, but we continued to observe prayer only".

The Islamic authority was not formed as a single system, but was more of a group of authorities concentrated within Prophet Muhammad's person. Thus, on the one hand, we find a certain status and certain provisions for the Prophet, while on the other hand we find a focus by the opponents of Islam to the on incidents and issues related to the Prophet's personality. At fifty three, the Prophet married Aisha, then Soda, then Hafsa when he was fifty five. Then he married Zainab Bint Jahsh at fifty six and had grandchildren. The personal life of the Prophet was subject to many discussions which were referenced by Islamic interpreters. Many Muslims threatened to marry his wives after his death, and some of them threatened not to marry any of his daughters, etc. This issue required Quranic verses beyond content concerning Islamic criminal provisions.

There were two incidents concerning the wives of the Prophet that undoubtedly left an impact on their lives. These impacts soon affected the rest of the Muslim women for reasons related to the nature of the Islamic expansion itself – the first reason being the divorce of Zaid Bin Haritha, a slave [that the Prophet set free], and the marriage of the Prophet to Zaid's ex-wife. The second reason was the emergence of rumors over a relationship between Aisha Bint Abu Baker and a Muslim man. These two incidents were abused by enemies of the new religion. These events were followed by several verses from *Surat Al-Ahzab* [The Combined Forces] which granted the Prophet's wives special status, considering them unlike any other women, and ordered them to be house-bound and isolated, prevented marriage to them after the death of the Prophet, and deeming them mothers to the Muslims, which meant that marrying them is forbidden.

However, this tense atmosphere did not have a great effect on the everyday life of women, even though the many battles had objectively undervalued the productive forces in society, and women in particular, and created a concept that has nothing to do with lowering of the gaze or the "adultery of the eye and the tongue", or other old-fashioned stories that give the impression of conservatism, concealment, and pureness. We deduce from the early Islamic stories that the point of the veil was not so much to convert public life into monastic life, but to create a factor of distinction for women (to distinguish between the free, the slave, the Muslim, the *Dhimmi* [People of the Book] etc. This issue of distinction developed with the gradual conversion of Islam to an ideology, which is confirmed by all stories that speak of slaves who: "at the time of the *Al-Sahaba*, used to walk in the streets without veils and serve men with pleasure." According to Al-Baihaqi, Anas said: The servers of Omar, may Allah be pleased with him, serve us without veils and tress". And Al-Albani says without

hesitancy: “From the conditions of the first Muslims on the People of the Book was to let their wives reveal their legs so as not to be similar to the Muslim women.” All these stories contradict the concept of fear of seduction and the need for conservatism (12). The woman character, psychological and corporal appearance doesn't change; the *awra* [parts of the body kept concealed in modesty] is the same also. Isn't difficult to imagine Madina society living in harmony while exaggerating the isolation of Muslim women, who participated more in public life and decisions than any other women, seeing as early Islam had been the prevailing and governing system of Madina since the Battle of Badger. It is clear to those who research that the veiled women were a minority among Muslim women at the time of the Prophet's death.

The stories of that era clearly show that *Al-Sahaba*'s stances varied between flexible and strict, which indicates a plurality of opinions and attitudes. It is said that Omar Bin Al-Khattab demanded more than once that the Prophet veil his wives and that he urged the obedience of women and children to the men. Shi'ite literature refers to Omar as saying: “Two pleasures were allowed during the time of the Prophet which I have forbidden”. It is known that he had asked from the pulpit of the mosque for someone to testify with him of the existence of a Quranic verse that orders the stoning of adulterous men and women, but he did not find anyone.

The early Islamic provisions were characterized to be more personal (individual) than social. So it is no longer possible to talk about ruling on the matters of life or about state apparatus. And so, the punishment of an adulterous woman to stay at home (*Surat An-Nisa*, verse 15). The custom that existed before that time where the son inherited all the money and the parents decided what's in their will changed into to a rule that states that the male's portion of inheritance equals the portions of two females, which is a provision that's more familiar to the customs of Yathrib. Inheritance was arranged based on blood relations (*Surat An-Nisa*, verses 11, 12, 176). Forbidden forms of marriages were circumscribed. Marriage to parents and marriage to two sisters simultaneously was prohibited. Prior to *Al-Hijra*, Islam approved of temporary marriage (paid pleasure) and enjoying concubines.

The establishment of Islamic power was associated with invasions and continuous battles, which we now describe as “a state of emergency”. Legislation was gradually characterized by the militarization of society which was dominated by patriarchy and the rise of privileges and “rights” for the male warrior. Islam established rules for determining parental lineage, considered marriage as the main organizer of gender relations, and

determined that the penalty for sex out of wedlock should be a hundred lashes. However, Islam also stipulated that four people need to have witnessed the act of adultery to be able to make the accusation, or else it would be considered slander (i.e. accusing a woman of adultery) which is punishable by eighty lashes. As for male privileges, men forced concubines to work as prostitutes until the fifth year of *Al-Hijra*. Temporary marriage was practiced on a large scale during invasions, and it was not forbidden, for instance, to have intercourse with pregnant women and captives. Likewise, birth control was not discussed in order to avoid the results of several form of acceptable sexual relationship before *Khaybar* battle in the seventh year of *Al-Hijra* (13).

This factor, though it undoubtedly left an impact, was not decisive in the matter of restraining women and commanding all the Muslim women to be veiled. The Islamic expansion in place and time was coupled with the weakening of the Arab family due to the dual invasion – the bringing of people and the new religion to the land of others, and the others bringing flesh, blood, and culture to the heart of the house of Islam. Every Arab house came to have at least one non-Arab woman, whether concubine or captive. Tribes tried to rectify that as much as possible by using the loyalty system and by nationalizing Arab women and isolating them in the name of the religion. This led to the expansion of the system of isolation that existed within the house of the Prophet and did not prevent Aisha, for instance, from becoming involved in the Battle of the Camel. A dialogue between Ibn Omar and one of his sons expresses this transformation, which went beyond the early Islamic experiment prior to the formation of *Fiqh* schools. Ibn Omar said: “The Messenger of Allah (May peace be upon him) said: Do not prevent women from going to the mosque at night. A boy said to 'Abdullah b. Omar: ‘We would never let them go out, that they may not be caught in evil.’ He (the narrator) said: ‘Ibn Omar reprimanded him and said.. I am saying that the Messenger of Allah (PBUH) said this, but you say: We would not allow!?’”

Before transitioning from the prophetic era, it is necessary to consider for a moment the institution of marriage in the first Islamic society and its later development.

Marital rights and duties are in general affected by several factors, the most important of which is traditional customs, the religious institution, manifestations of power in the state and the society, and the mode of production of material goods. The evolution of the institution of marriage in Islam gives us an idea about this mutual effect between the value system

on one hand, and the conditions of human production and means of life on the other hand.

Marriage in pre-Islamic Arab society was conducted as a tribal affair, and not officiated by a religious or official institution. With the exception of Christians and Jews, traditions in the Arabian Peninsula did not require any religious rule for marriages. Marriage was considered a form of contract of compensation [equal exchange] between individuals or families. Customs varied regarding obtaining the approval of the woman; some tribes gave women that right except when marrying a cousin, and other tribes did not give women the right to object to the decision of the parents. One of the most important amendments which Islam introduced in the time of the Prophet Muhammad was requiring the consent of both spouses for the marriage contract and deeming all forms of compensatory, forced marriages prohibited (prohibition of *Nikaah Al-shighar* [a man marrying off a relative to another man as a dowry to marry the relative of that man], in addition to imposing a dowry for the woman (And give the women [upon marriage] their [bridal] gifts graciously.) **It is well established that marriage was a simple civic affair, the most important rule for which is declaration. There is no agreement on the unavoidability of the presence of witnesses in the first religious accounts.**

Arab-Islamic society soon witnessed a decline in women's rights in the midst of militarization and expansion. The results of this decline were manifested in the return of the concept of trade to the definition of marriage by jurists (*Al-Nikaah*, in the dictionary of the Middle Ages). During the first three *Hijri* centuries, the domination of men over sexual life left its mark on the definition of marriage among *Fiqh* schools. The *Maliki* school considered marriage a “contract for sheer pleasure with a woman”. The *Hanbali* school considered it a “contract under the name “marriage” for the benefit of pleasure”. The *Hanafi* school considered it a “contract that states the entitlement to pleasure, intentionally, and is concluded for the man, not the woman”. The last definition is adopted by Shia Imami, who sustained temporary marriage (*Nikaah Al-Mut'a*) as a legitimate form of relationship between genders.

In addition to that, marriage became subject to religious specifications that did not exist during the life of the Prophet. The basic rule was that religion was ease and not hardship. Thus, the presence of two witnesses – during marriage – became mandatory, as did revealing the marriage. Some refused the testimony of a non-Muslim and considered the testimony of a female to be half a testimony, etc.

In terms of customs, we find numerous examples of *Hadith* concerning the woman's right to refuse to marry those she does not want to, whereas compulsory marriage to a cousin remained stronger than *Al-Sunnah* and the laws. A woman's cousin, as the saying goes: "lowers the bride off the camel's back" (i.e., stops her wedding to another man to marry her himself as per tradition). Arab tribes preferred the cohesion and internal solidarity of the tribe over the opinions of its daughters.

However, the main problem was that the Caliphate was seeking to develop its ideology and the different expressions of opposition as well. If it is possible that life could have taken a different course than the one it did, it is necessary to stop and consider the development of the Islamic ideology, or more precisely, the process of transitioning from the legend of Baal to the dictatorship of man.

Building the Islamic Ideology

Jawad Ali, an Arab Iraqi historian, wrote: “God (the Moon) plays a major role in the religious legends for *Al-Jahilieen* [people who lived prior to the revelations given to the Prophet Muhamad], a role that suits his position as a man, a *Baal* [i.e. a word for husband in Arabic, taken from the name of the god *Baal*]. The husband is the *Baal*, the lord, the master, and among Arabs has the last word [authority] over his wife and his family. He is the strong one who has the right [to do anything], and has the right of obedience and submission over his wife. Based on this theory, the gods made the moon the possessor of omnipotence in the pantheon of the people of *Al-Jahilyya*. From this powerful almighty god came Allah, after the trinity of some of the *Jahilieen* people turned into one [god], and they extracted from this one god, the worship of Allah” (14).

This gesture to Baal, the moon, the man, (or the male-sun in the northern Semitic languages) was necessary to enter the transitional period from pre-Islamic to Islamic and the stage of revision of history.

We will see that what developed in terms of the humiliation and undervaluing of women’s value comes from the heritage of the *Hadith*. Today, it is known to what extent sayings attributed to the Prophet were thrown into this heritage sometimes more than two centuries after his time.

In the beginning, God created Adam from clay, and then created his wife from his rib. This rib, despite its triviality, was crooked: “The woman is like a rib; if you try to straighten it, you’ll break it, and if you want to enjoy her, you’ll enjoy her with her crookedness” and “Act kindly towards woman, for the woman was created from a crooked rib” (15).

Matters did not always need to be supported by *Hadith*. As far as Adam’s wife’s sin, Ibn Jarir Al-Tabari, in his interpretation, mentions the antecedence of the sin of the woman to that of the man, and he claims God said to the woman: “You seduced my slave and punished her saying: “I will make her bleed every month as she did to the tree, and I will make her impertinent after I created her patient, and I will make her pregnancy painful and giving birth painful” (16). As for Ibn Al-Mussayyab, he states: “Adam wasn’t sane when he ate from the tree; Eve made him drink wine until he was drunk and then led him to it”. In Ibn Kathir’s interpretation, Adam says: “Eve ordered me”. After the Quran brought women and men together in “sin”, Muslims went back to placing the burden on the woman alone by relying on Jewish heritage.

Narrators and jurists establish essential differences between women: believer/non-believer, sterile/fertile, free/slave, virgin/non-virgin, adulterous/non-adulterous. And if some of these differences can be traced back to the Islam of Yathrib, it is difficult for the mind to accept a saying attributed to the Prophet which states: "A fertile colored (*sawda*) woman is better than a beautiful one who isn't" (17) when the Prophet rejected any discrimination based on skin color, and infertility is considered in the Quran a result of divine will.

Al-Baihaqi tells another *Hadith* by the Prophet about marriage: "Marriage is slavery, so be careful in choosing who you marry". Al-Turmudhi continues: "If I were to order anyone to prostrate himself before another, I would have ordered a woman to prostrate herself before her husband" (18). As for the collector of *Hadith* Muslim, we find in his collection: "If it wasn't for Eve, no woman would ever betray her husband"; "Be aware and avoid the allurements of life and women; for the first trial for the people of Israel was caused by women"; "Those who have passed away blasphemed only because of women, and those who remain only blaspheme before [because of] women"; "I have not left behind a more harmful trial to men than women"; and "A woman comes and goes in the shape of a Devil". As for Al-Mundhiri in *The Intimidation and the Enticement*: "Woman comes in the form of Devil", and "No man is left alone with a woman without being joined by the Devil as a third".

As for Al-Belawi in *Alef Baa*: "Separate the breaths of men and women, for if they see [each other] and meet, it is the illness that has no cure" and "The Prophet asked his daughter, Fatima: "What is considered good for women?" She said: "That she does not see a man and is not seen by a man. So he hugged her and said: you are truly my daughter" (Chapter 2 p. 76).

Another example of the *Hadith* addresses women's right to demand a divorce, I write some of what is in the books of *Fiqh* [Islamic jurisprudence]: "If any woman asks her husband for divorce without a strong reason, the fragrance of paradise is forbidden to her"; "*Moukhtali'at* [women who divorce their husbands] are hypocrites and whichever woman seeks a divorce from her husband without cause, she will not find paradise". There are also those statements dealing with the blind obedience of women to their husbands: "If I were to order anyone to prostrate himself before another, I would have ordered a woman to prostrate herself before her husband"; "Whichever woman dies while her husband is pleased with her enters paradise"; "I came to the Prophet for a need, he said to me, "Who is this! Does she have a husband?" I said, "Yes", so he said, "How do you treat him?" I said, "Without neglecting my obedience to him, unless

I cannot”, so he said, “Look to where you are with him. He is either your heaven or your hell”“.

An entire ideological system was built based on the eternal curse of women, considered to be the devil carrying evil and temptation wherever she went; hence the need to marginalize her and emphasize her inferiority. Because it is impossible to interfere in the Quranic text, hundreds of *Hadith* attributed to the Prophet were innovated. In spite of their weakness, the Imams attributed to them the strength of an authoritative source, according to the principle: “ A weak *Hadith* is better than any talk of men”.

Where is the honoring of human beings, either male or female, found in the Quran, in what is mentioned by Imam Al-Ghazali (450-505 AH) and other *Hadith*? Al-Ghazali says, “A woman has ten *awrat* [dishonorable aspects]. If she gets married, the husband covers one. Then if she dies the grave would cover all”; “There has been no temptation released upon my people, more harmful for men than that of women.” and “I have not seen anyone more deficient in intelligence and religion than you. A cautious sensible man could be led astray by some of you.”

There is no doubt that what Imam Al-Ghazali calls a “revival” of religious scholarship, has killed all that’s left of women’s rights and [any chance] to liberate marriage from being considered slavery of women and a means of sexual relief for men. Let’s read what he says about women: “The agreed upon saying about the manners of a woman, in short, is to stay at home working with her weavings, without going out much, little speaking to her neighbors and not going to them unless essential, to stay faithful to her husband in his absence and ask if he’s satisfied with her in all her regards, doesn’t betray him with her person or his money, doesn’t leave her house without his permission and if she goes out with his permission, should do so discreetly with old clothes, seeking empty paths, not roads and markets, not to be heard by a stranger nor be recognized, doesn’t become acquainted with her husband's friend in case of need, but she should disguise herself from whom she thinks knows her identity. Her only concern is her righteousness and managing her house, to pray and fast, not to answer her husband’s friend at the door if he is not present, doesn’t seek to find out who’s there or reply to his speech out of respect for her husband’s jealousy of her, to be content with whatever income Allah gives her husband, to consider her husband’s right’s before her own and her relative’s, to always be clean and ready in all circumstances to serve her husband’s pleasures when he orders, to be compassionate with her children and protect them, to be brief in verbally scolding her children and in referring her matters to her husband.” The female role model according to Al-Ghazali is, “She, who if

her husband marries three after her, would feed him savory things and say: go with full action and power to your wives”.

As for the men, the matter is different. Hijet Al-Islam says, “Some traits are overcome by lust so much that one woman doesn’t suffice, so that man may want for himself more until they are four. So if God grants him affection and mercy, he might be satisfied and pleased with them, or he may choose to replace any of them. Ali (the Prophet's cousin) married seven nights after Fatima's death, and it is said that Al-Hasan the son of Ali was one to marry often; he even married over two hundred women. He may have married four at a time, or may have divorced four at once and replaced them. The Prophet said to Al-Hasan, “You resemble me in looks and in morality”, and also said: “Hasan is like me, and Al-Hussein [his brother] is like his father [Ali]”. Al-Mughira Bin Shoeba married eighty women, and some of *Al-Sahaba* had three or four women, and those who had two were uncountable. Whatever the known impetus, the treatment should be proportionate to the illness. The objective is to soothe the self so that it is looked at it in abundance and scarcity” (19).

On the basis of this patriarchal ideological structure, a quasi-divine aura makes any violation of this degrading image of women a breach against religion.

Glimpses of Arab-Islamic History

Despite the process of making women absent ideologically and practically, there were constantly feminist resistance to the process of marginalization and exclusion. *Kharijite* women were involved in battle supplying the warriors, and in production and literary and political life. Through their presence, women have raised the problem of the Islamic position towards them in fundamental issues such as the female Imam. The young of the *Khawarej*, who formed an army of one hundred and fifty female fighters, recognized the rights of women to become Imams, so they elected Ghazaleh as Imam. Al-Baja' Al-Kharejeea played a major role in the fight against the tyrannical power of the Umayyad Caliphs, until the moment when Obeid-Allah Ibn Ziyad, the prefect [*Al-Waalee*] of Al-Basra had her executed by severing her hands and legs. In an attempt to terrorize the women, the said prefect chose penalties that included chopping off the hands and feet and then displaying the naked bodies of *Kharijite* women in the markets. Jahiza, Farasha, and Um Hakeem are names that entered Islamic history as symbols of the role of women in socio-political struggles.

It is difficult to be certain of many of the facts that come to us from the foes of the *Khawarej*, which include, as they tell it, the rejection of stoning of the married adulterer and the adulteress because of the absence of a [supporting] Quranic verse. Some of them considered the captivity of unbelieving women to be adultery. It is an exaggeration when they say that the *Ibadiyah* [a group from *Al-Khawarej*] were freed from all limitations, even those related to gender. Hussein Al-Karabisi, in *Maqalat Al-Khawarej*, attributes to some of them allowing Muslim women to marry non-Muslims rather than limiting this practice to men (20).

The role of women in the ranks of extremists emerged early, since the second half of the first century AH (670 AD). Al-Tabari and Al-Jahiz mention that the extremist movement planted its seeds when two women (Hind Al-Mesnieh and Leila Al-Na'ttayah) made their home the meeting place of the extremists (21).

The Abbasid golden age was fittingly an era of conflict between the religious and the intellectual, conservative and enlightened, the diligent and the imitative. The struggle of women in the ranks of the *Kharijites* opposition which supported Ali was not enough to break this trend towards the seclusion of women. Perhaps the flourishing of the political economy is what, for concubines, foiled attempts to stifle women in public life and

made the cultured woman who loved life, literature, art, poetry, and courtship return to the heart of this society after their formation in private schools in Madina and cities. Thus, with the emergence of a large social, cultural, and political role for the concubines, they shattered the aura which was bestowed to isolate and conceal the free woman. This role is extolled by Al-Jahiz in his well-known letter when he compared the slave and the free woman. This role was confirmed by the control of the sons of concubines over the Abbasid Caliphate beginning with Al-Ma'moun and then their taking over of Andalusia from its inception to its fall and the prominence of thought, literature and science among them.

The Abbasid golden age carried with it basic ideas about the emancipation of women and their participation in public life. Al-Ma'arri sharply criticized polygamy and the *Ismailis* rejected polygamy taking as an exemplar their sixth Imam Ismail who in his lifetime married only one woman. Likewise, the *Qaramita* and the Unitarians (the Druze) reject polygamy. The narratives concerning gender that the *Qaramita* opponents speak of are questionable for historians. There is an ancient mystical text, which dates back to the period after the ruler Bi Amr Allah Al-Fatimi, that affirms the insistence of what was known as mysticism in its two divisions, the Ismaili and the Unitarian (the Druze) on the principle of equality in the context of the era.

It is stated in *Shart Al-Imam Sahib Al-Kashf* [The Condition of the Shown Imam]: "The provisions in the statutes of *Al-Rida wa Al-Tasleem* [satisfaction and acceptance of the will of God] in the case of marriages of the Unitarians [the Druze] and intimacy between brothers and sisters are shaky for them, and they have no knowledge of what the conditions of religion require of them and how [immoral] the companionship between them is. My lords [sirs] must know that the terms of *Al-Rida wa Al-Tasleem* do not follow their course other than in marriage, because *Al-Rida wa Al-Tasleem* come from the almighty Creator. So who has gone against them, he has gone against *Maulana* (praise be his mention). The conditions of religion require that if a Unitarian man marries a Unitarian woman, he must deal with her as his equal and treat her fairly with all that is in his hands, and half of everything he has is hers. And if the situation required their separation, it must be known who the abuser of the other is. If it is the woman being disobedient to her husband, and he is known for his strength and fairness towards her, and the woman has to separate from the man, to him is half of all that she owns, if trustworthy people know her abuse of him and his fairness towards her. If the trustworthy people know that he is abusive towards her, then she is not under any requirement and leaves the marriage with everything she owns, and to him is nothing from her money.

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And if she is responsible for the separation, she must give a half of all that she owns, even if it's just the robe on her back. And if the man chooses to separate from her, as his own choice, without any guilt on the part of the woman, to her is half of all that he owns of clothes, luggage, silver, gold, and livestock, and everything he got his hands on in order to be fair and just. Let the sirs learn with certainty this correspondence and learn about it and about this condition, for this is how the situation runs its course in justice and in fairness.” (22).

Mu'tazila stressed the education of women and so did most of the Ali's and a number of Sufis, while some bands, such as the *Nusayria*, stood against her education and supported polygamy. We find in the *Risaalat Al-Banat Al-Kabeera* [The Big Messages of the Girls] of the Book of Wisdom of the Druze, a text that calls for women's education in wisdom, religion and science. It states, “Failure to memorize the wisdom is the great sin, for in memorizing the wisdom and knowledge raises the degree of people who have the truth; but by neglecting it, you know the liars from the truthful. Understand this letter, O girls, and make it as nations of your minds and be diligent in learning the wisdom. Memorizing the wisdom distinguishes the good people from the evil-doers.” (23)

The veil was not obligatory for many groups, which Al-Baghdadi accused in his book *The Difference Between Sects*. We notice in the description of the society of amity established by the *Qaramita* in the city of Kufa, given by Ibn Sinan and Ibn Al-'adim, that women and boys pay the *Khums* [a tax], just like men, at their work and they had the same rights. Ibn Al-Jawzi emphasizes in *Al-Muntazem* as does Al-Ghazali in *Fada'eh Al-Batiniya* [*Esoteric Scandals*], the fall of the veil and the intermingling of the sexes among mystical groups, referring to the *Qaramita*. We also find in more than one Ismaili text an interpretation of the veil as a concealment of minds or a sign of the disappearance of truth in the veil, while *Meethaaq Al-Nisaa'* [*The Women's Charter*] in the Druze Book of Wisdom emphasizes that a woman's education takes place from behind a veil and in the presence of a blood relation (father, son, brother, or anyone entitled to custody from among of the Druze). (24)

Al-Jahiz, one of the great intellectuals of his era, confirms the principle of equality between the genders when he says: “We do not say and anyone who has a mind does not say that women are superior or inferior to men by one, two, or more degrees, but we saw people who have debased and demeaned women so much and disparage most of their rights”.

And as we can see, Arab women have led political trends, women like Aisha Bint Abu Bakr, Ghazaleh Al-Kharijiya and Hind Al-Na'ittiyah. They fought for peace as did Sakina Bint Alhussein Bin Ali, who turned her council into a center of literature, poetry and science. The Abbasid and Andalusian golden ages brought crucial ideas concerning the emancipation of women and their participation in public life.

Both Ibn Rushd and Ibn Arabi defended women's rights and dignity. The former states, "Our social situation does not allow us to see what women's potentials are, and it appears that they weren't created for anything other than giving birth and nursing. This case of slavery destroyed their ability to do good deeds. That is why we do not see amongst us women of moral virtue. Their lives pass by as the life of a plant does. They are in the custody of their husbands. From here comes the sorrow that devours our cities, that and the fact that the number of women in the cities is twice the number of men, and they can't earn a living with their work." Ibn Arabi said in his speech about the complete human, inclusive of women and men alike, "Our talk is of the image of the complete human being, whether man or woman. Humanity gathers male and female in existence. Masculinity and femininity are accidental and are not facts of humanity [nature]." Despite Ibn Rushd's demand for the renewal of religion and the insistence of Ibn Arabi on the need for rules to keep pace with the time and place – of which he says, "I know that the perfect, accomplished, capable wise-man is he who treats each case and time as suits it, and does not mix them up" – people in the East did not benefit from their knowledge as the pioneers of reform in the West did. This carried the torch of knowledge away from the Islamic world.

On the one hand, the oppressiveness of the Caliphate was reinforced by, and reinforced, the authoritarian character of the patriarchal family. Despite the effective presence of women in tasks with a public benefit, which greatly exceeded her role in raising children and cooking, women, with the exception of widows and slaves, did not have the right to dispose of what she produced, including, cloth, crafts, and foods. In the countryside, she worked in the home and the field, tilling, harvesting, studying, making food, collecting firewood, fetching water, cleaning the house, and raising children. However, she remained a captive of the social-ideological patriarchal structure in a formation that did not possess sufficient individualism amid the monopoly of men on guardianship and decision-making.

The doctrinal hegemony, the defeat of pluralism in society, closing the door to *Ijtihad* [interpolation based on religious texts], and the military-

security nature of the rule of the Caliphate left their marks on the status of women, which kept them isolated and stifled their societal presence for centuries. The eras of decadence are not associated only with injustice towards and marginalization of women and her absence from public life, but also with a decline in thought, diligence, science, and the cultural status of Arabs and Muslims.

The Return of Awareness

The official *Fiqh* schools (*Hanbali, Maliki, Shafiee, Jaafari* and *Hanafi*) grew in the shadow of the patriarchal society of the medieval centuries. They sometimes co-existed with that era's parameters, sometimes by repeating what is attributed to early Islamic society, and sometimes more in harmony with the reality in which they grew. Thus, there is no harm in us finding exaggeration among the jurists in the oppression of and prejudice against women, and their redundant use of weak *Hadith* that contradict the spirit of the *Quran*. If we avoid addressing the socio-economic variables of the era of stagnation and the dominance of traditional *Fiqh* schools, it is because of the belief it would be illogical to reduce Arab civilization to an Islamic discourse alone and to reduce the Islamic discourse to the five schools of *Fiqh*. Whoever discusses a civilization discusses intellectual creations, cognitive discoveries, scientific figures, literature, and the arts etc. If it were up to Ibn Hanbal, there wouldn't have been schools of philosophy and other sciences, and the fate of the *Dar Al-Hikma* [House of Wisdom] would have been the grave.

Thus, it is necessary to scrutinize the historical contributions in philosophy, theology, schools of jurisprudence and other unofficial groups, mysticism, and non-religious sciences. We should notice that the monopoly of the schools of jurisprudence and mundane knowledge by the religious authorities was parallel to the process of decline and decay in Arab and/or Islamic history.

Based on this necessary observation, it is easy for us to see the return of the 'spirit' with the process of the invasion and exploitation by external forces suffered by the Arab and Islamic worlds. It is one of the tragedies of human history that the advancement that carries with it the winds of positive change also carries the spores of great wickedness in the relations between human beings. Muslims woke up from their torpor at the sound of the drums of colonialism in their own home. Western colonialism brought with it industrial goods, the printing press, and the cannon, suffocating pre-capitalist socio-economic structures, reassembling them in an imitative and fragile form (25). This was accompanied by the breaking of three historic monopolies that were among the fundamental factors behind the decay [of Arab-Islamic society]:

- The monopoly on education and knowledge by the clergy
- The monopoly on public work by men

- The monopoly on expressing the public interest by the Caliph.

Although the entrance of women into the labor market in the Arab city was the negative and arbitrary result of the process of the penetration and dominance of capitalism in the depths of the Arab community, this does not mean under any circumstances that we can reduce the issue of women to a mere result of the collapse of the pre-capitalist production units that are based exclusively on patriarchal family work. Some women entered the world of education, medicine, the press, manufacturing, and government posts early on in the expansion of the scope of public participation for women. The birth of schools and universities had a large and critical role in breaking the traditional view of the professional preparation of women and their future. The enlightened women and [social and political] currents realized the need for engaging early on in the new professions that were brought by capitalism, like journalism and teaching. Likewise, civil society organizations, which are returning powerfully since the last century, allowed women to effectively participate in charitable or cultural organizations with which women are typically associated. However, women were walking on a rugged path enclosed by thorns and despite the great boldness which characterized the female pioneers, the resistance from the patriarchal society was great. As a female elder of extremely old age said: "Every time a woman took off the veil and left the house, it was in the framework of a battle she fought for the general good: the nation, liberation, and the effort to save her surroundings from ignorance. Men and parents were not supportive of this new woman, except rarely" (26).

It was a luxury for a woman to address women's issues herself and for herself as a human being.

Islamic countries have failed to achieve the shift from national liberation to the emancipation of citizenship. From Egypt in 1919 to Algeria's War of Independence, the woman who struggled for independence did not find the recognition she deserved following the retreat of the democratic currents and the triumph of the mentality of the father figure and the undivided party. Every authoritarian power is necessarily patriarchal and depends on patriarchal virility either consciously or sub-consciously. Therefore, the personal status laws were not furthered to meet the standards of the writings of the Islamic reformer Tahar Haddad. The direct result of the authoritarian structures of political authorities was the promotion of violence and authoritarian structures in the ranks of society – for which women have paid the ultimate price.

However, this development was accompanied by the rending of the historical forms of the large family and the entering of women into public life and the labor market, and sometimes the transfer of the labor market to her own house by the horizontal expansion of the capitalist system. This made her the axis of the causes of reconstruction, development, and democratization in every attempt to scrutinize the reasons for the failure of the Arab world to enter contemporary history as an active party and not merely subject to events.

Women returned as a part of all political camps; the fundamentalists need her as a façade to cover his tardiness in the procession of women's rights today. The political powers try to make her a partner so that she serves as a certificate of good conduct for the power's association with this [modern] era. Thus women, with or without the *Hijab*, have become a central stake in the formation of tomorrow's Islamic societies.

Therefore, it is necessary to follow two axes in the cause of women today. The first axis is the Islamic reformation and women. In one approach, the figures of reform succeeded in reconciling between the rights of the woman and their understanding of Islam. In other words, they canceled any hint of distinguishing between the two sexes within a faithful Muslim conception.

This matter constitutes a tremendous intellectual achievement in an era of general regression in a religious society and in a religion in which the relationship between heaven and earth and belief and legislation is often complex and thorny. As for the second axis, it is, on one hand, the dismantling of the discourse of discrimination and informing about today's women's rights to reinforce communication between women from every country and belief systems. On the other hand, it is exposing the obscurantist discourse that is adversarial to the dignity of women in its doctrinal and social expression.

Islamic Reform and Women

How is it possible that Islam honors the human being (male and female) and oppresses women? How could verses from the word of God be superseded in the lifetime of the Prophet, out of respect for the changes in conditions and times? How could the jurists stop the hands of the clock at the provisions issued in the Early Islamic era? How could the Quran give the highest status to reason and to rational people, but the Salafis kill reason in the name of protecting Islamic tradition? Why does Islam urge seeking out knowledge and science if “everything exists, thanks be to God”?

From Jamal Al Din Al-Afghani, Abdul Rahman Al-Kawakibi, Qasim Amin, Tahar Haddad to Mahmoud Muhammad Taha, and a generation of modernizers, the reformists have addressed the prison of fundamentalist ideology through these legitimate inquiries.

It would be unfair to say that resistance to religious ideological elaboration belongs only to the 20th century, for the nuclei of this trend were planted in the time of Abi Dharr Al-Ghafari, Gillan Al-Dimashqi, Hasan Al-Basri, and Malik Bin Dinar. This trend was dealt with extensively by Al-Nazzam, Al-Allaf, Al-Jahiz, Al-Kindi, Ibn Sina and Masawaih. This trend found in the enlightened parts of the mystical schools the interaction between philosophy and religion. Ibn Rushd and Ibn Arabi also made great civilizational achievements in this area.

Even the *Fiqh* schools did not survive the virus of modernization and reform, even if they were among those the least affected by it. As for Islamic societies, they spontaneously register in their collective subconscious the civilizational golden age of that period which was revived by people of intellect, philosophy, and knowledge, despite all the attempts to obscure objective historical writing.

Reformists and modernizers followed many approaches most of which rely on the separation of proof of the Creator and His Oneness as an eternal basis and the consideration of the issues of earthly life from all the conceivable branches, all of which, for many reasons, are guidance and mercy for humans on the basis that religion is ease and not hardship. They also took the prophetic *Hadith*, “Today you are on the path of religion, so do not walk backwards after me [after I am no longer with you]”. The general organization of society, to borrow the expression of Sheikh Abudllah Al-Alayli, “is subject to operating perpetual variables; these

variables are at all times of concern. If they were emptied into a mold, and the mold was closed, they would deteriorate and come to an end, and decay until their last gasp of life, in other words give its last breath. The bonds of the life of public institutions would become moribund. Society would not be explosive and dynamic, but would at all moments be like an inexhaustible waterfall.” (27)

Al-Afghani and Mansour Fahmi concur on the classification of isolation and prohibition as major calamities suffered by women in Islamic communities. In Al-Afghani’s view, “Men sometimes restrict and shackle women under the pretext of religion and other times under the pretext of her inability in terms of her physical build, even though physique and gifts such as strength and [a sound] body, mind and health are not equal among all men at all. It is not right that women be judged for lacking these characteristics. What we see of inequality is simply in terms of types of upbringing and letting men free while women are shackled with a lack of verdant expanses and the restriction of her talents in narrow straits”.(28).

Imam Muhammad Abdu stresses that the rules change with changing times and *Sharia* was not put in place to change the course of the universe. The lesson is in the intention and meaning, not in the pronunciations and [sentence] structures. Need authorizes forbidden acts and appointing by tradition is like appointing by the text. The judgement that is affected by need or necessity becomes agreed upon. This is the structure of true Islamic law, and the basis of all sacred law. Imam Muhammad Abdu wrote since 1880 on the issue of marriage and women, criticizing the traditional discourse of *Fiqh*. His *Liberation of Women (Tahrir Al-Mar’a)* had a dramatic impact on Qasim Amin.

The book *The Liberation of Women* has opened one of the most difficult files on rights and freedoms in the Arab world. Despite the harsh reactions that accompanied its release, Qasim Amin approached the idea of the modern woman starting from the local reference all the way through the universal reference. He started with a call for awakening then proceeded to relying on the rules of sociology and modern psychology with a pragmatic explanation that adds two dimensions to the principle of the issue of women’s rights, which are necessity and public welfare. Qasim addresses the East’s trouble with the generally prevailing authoritarian approach by saying: “Look at the countries of the East. You find women enslaved by men and men enslaved by the ruler, so he is an oppressor in the house, and the oppressed when he leaves the house”. As an example of the violation of women’s freedom he says: “When a man forbids his wife from going out and does not respect her freedom, she is a slave, or even a prisoner, and

prison is a greater deprivation of liberty than slavery”. He says of freedom: “Freedom is the base for the advancement of humankind in his endeavor to achieve happiness; therefore nations which have realized the secret of success consider it [freedom] to be the most precious of human rights” (29).

Along the same lines as Qasim Amin and the necessity of reform, Abd El-Razak El-Sanhuri says: “Islamic law is in need of a strong scientific movement that restores its strength, shakes off the dust of intellectual stagnation that has accumulated on it, and which has prevailed in the East for a very long time. Islamic law is in need of a movement that breaks off it the shackles of tradition to which the backward jurists adhere” (30). El-Sanhuri suggests developing the concept of consensus [*Ijma*] as a product of an elected legislative power. He says: **“Consensus in the first stage was something produced unintentionally without being noticed, a tradition to which people became accustomed so it became respectable. In the last two stages, it is produced consciously, even if it didn’t come from an intentional agreement. If consensus has developed in its logical stages, it should reach a phase where it results from an intended agreement. Resulting from incidental agreement is not sufficient. Thus the Muslims gather, or their representatives gather for them, and air their issues. They decide upon provisions [statutes] that conform to the culture of their time, and these provisions are legitimate. As such, consensus becomes the agent of renewal in Islamic law, which retains its flexibility and ability to evolve.”**(31).

For Tahar Haddad, Islamic reform took a big step forward through Ibn Zitouna’s insistence on opening the door of accountability and the need to understand the societal status of women. In Tahar’s words: “The subject of the woman and marriage, home and family, are psychological, social and legislative matters” (32).

Tahar Haddad addressed the following questions to a number of clerics:

- Does the woman have the right to choose her spouse? And does her guardian? And who has the last word?
- Is the appearance of a shortcoming in one of the spouses that leads to annulment after [the marriage is] established considered an inevitable misfortune for the other?
- Does the long absence which destroys matrimonial pleasure give the woman the right to choose in the matter of divorce? Or is it [that right]

forbidden, as long as the provision of expense is maintained? Is the absence and the like the same in this regard?

- Is a divorce still valid if uttered as a result of anger or said out of the intensity of anger or the vehemence of a comment, or is a divorce only considered legitimate if it has become impossible for the two to live with one another?
- Can the woman prove to the judiciary a lack of compatibility between her and her spouse in spirit, morals, and desires, by which the well-being of the association between them is negated, and on [those grounds] call for divorce?
- Can the woman condemn the man at witnessing [his] adultery; or is that only the prerogative of the man, and if so, on what grounds is this consideration built?
- Is it permissible for the man to harbor the intention of divorce at the time of the signing of the marriage contract. Is that valid and the marriage finalized?
- In the house, is the woman an equal companion to the man, working in partnership on matters of opinion and execution, or is she a ward under his care, a tool to carry out his orders? And if she refuses, what happens?
- What is the extent of freedom for women's actions in trade or other [activities] as an adult? And does her husband have authority over her in that regard? Can he exercise destructive compulsion?
- What's the woman considered more generally? Is it stated that she can oversee prayer as an Imam, or in other activities outside of the domestic setting?
- Which parts of the body should be covered from sight to preserve morals?

Al-Tahir Haddad insists on *Ijtihad* as a doorway for renewal and as an authoritative reference for society for this renewal. Al-Tahir built the legislative section of his book *Our Woman in Sharia and Society* on the theory of incrementalism in the legislation of provisions relating to personal status. He considered these provisions extraneous and mundane, not affecting the essence of faith. They accept change and development. As for essential provisions like the doctrine of Oneness, the noblest morals, and instituting justice and equality between people are the eternal principles of Islam. As for the part of the book on social matters, it conveys to us scenes from the domestic life of Tunisian families in a detailed and critical display. Its purpose is to dissect the situation of the Tunisian family and search for weaknesses in its structure, culture, and customs.

In the book, Haddad's reform agenda is obviously clear in his call to give women their civil rights, such as equality in testifying [in court] and handling legal tasks, the freedom to control her money, and a change towards equality in her inheritance from men – in other words, the right of women to participate in the basic expressions of public life.

Haddad also addresses legal details at times, and medical details at other times, keen to establish justice and preserve public health. He ties the marriage contract to a medical exam for the two finances, guarding against genetic disorders and chronic and infectious diseases. He also stresses the importance of preventing underage marriage and issues a *fatwa* permitting contraception. He goes further by permitting abortion if there is fear for the mother's life and the well-being of the family.

He also speaks openly on preventing polygamy in order to preserve the family unit, its stability, and the solidarity of its members. Likewise, he calls for judicial arbitration in all cases of divorce and the right of the aggrieved spouse to enjoy monetary compensation, restraining the husband requesting the divorce from pursuing his whim to harm his spouse. Haddad criticized the reformatory foundation Dar Jawad, which was devised to deter the rebellious wife alienated from her husband. He considered as hypocritical, abominable, and abhorrent "*Al-tayaas aw Al-tajheesha*", or permitting the practice of the divorced woman marrying another man as a formality in order to be able to remarry the man that pronounced their divorce three times. It could be said that even today, there is no Arab country that respects women's rights as much as Tahar Haddad (34).

In a letter he addressed on the 4th of December 1930 to the French Resident-General after the French authorities had stripped him of his civil rights, he clarifies his thesis, which is consistent with the theory of governance of Ali Abdel Razek:

"The administrative functions in Islam are not religious as those ignorant of the matter think, for religion is spirituality, not a functionary post. Rather administrative functions are legislative in fulfillment of the State's interests in Islam and they develop according to the development of those interests, in negative or positive sense. By glancing at Islamic history, we can see how administrative functions occurred during the Prophet's life, during the lives of the four caliphs, and in Islamic countries after them, according to ever-changing necessities. If these administrative functions were religious in nature, they would have been in perfect form the day they came to be, and Muslims wouldn't have been able to eliminate

administrative functions and establish others in their place. We Muslims know how to distinguish, for example, between prayer and a marriage contract; the former is spiritual and the latter is functional to ensure rights and is merely a civic function that needs only satisfaction and acceptance for its conclusion, without prejudice and regardless of time, place or form.”

“As for our Sheikhs, I can’t delineate the difference in their stances and how distant they are in their attitude towards me from understanding Islam and the spirit of *Sharia*. I do not understand how they could bring themselves to sign an accusation that a Muslim is an infidel, because he established for himself the right to study the law and understand it as required by Muslims’ needs and the spirit of the era, no matter how erroneous his interpretative judgment may be. There is no doubt that, this way, they are forced to apply the sentences resulting from their judgement. So they issue a sentence to prevent the infidel from inheriting from his family, nullifying his marriage or preventing him from marrying, and forcing him out of the community of Islam, dead or alive, thereby destroying him socially as they desire (...).”

“No matter how hard I try to respect and honor others I can’t accept how families that have inherited their seats in Islam can decide who is Muslim and who isn’t. I don’t believe that anyone has the right to do that. A Muslim should have the freedom to abandon his religion whenever he wishes and declare as much to people” (35).

Sheikh Abdullah Al-Alayli broke several axioms in issues concerning women, marriage, and punishment for adulterers. He condemned the punishment of stoning and emphasized the need to return to the civil origin of marriage in Islam. He founded the concept of “practical *Sharia*” which he defended in the face of the superficial and puritanical aspect of Islam. This *Sharia*, as he says, is “according the logic of the Prophet Muhammad and the logic of science; it can adapt and renew itself permanently” (36). He explains, “This practical *Sharia*, with no doubt, is able to heal the incurable disease and high fever that is afflicting our world today. This *Sharia* is reflected in thought, society, and behavior, if it remains captive in rigid templates. This is what the Prophet warned about in his *Hadith*: “God sends to this nation, in the beginning of every one hundred years, one who renews its religion”. This *Hadith*, in my point of view, is an entire constitution of the kinetics of *Sharia* and its “dynamism” in the process of time. It is permanently renewed, trampling the idols of formulas in its long march” (37).

Among the first female defenders of women's rights, Nazira Zainuddin (1908-1976) was distinguished for her in-depth study of Islam. Her views originated from her reformative perspective towards religion. At the same time, she was a reformist in her reading of Islam, and fought for gender equality, women's contribution in public life, and the removal of the veil.

She released her first book, *Unveiling & The Veil*, before she turned twenty and in a time that witnessed a variety of reformist voices. The release of her book in Lebanon preceded the issuing of Tahar Haddad's book in Tunisia. In her book, the reader finds an advanced reading of the concept of women in Islam which is based on the need to employ reason in religion, focus on its sources, and obtain a critical view of Muslims' various readings of it. She read Al-Tabari, Al-Baydawi, Al-Khazen, Al-Nasafi, Al-Tubrusi and Ibn Arabi from among the old writers, and Al-Afghani, Abdu, Al-Ghalayini, Al-Rasafi, and Al-Zahawi from among the contemporary writers.

The young author focuses on the role of education and the role of men in uncovering the facets of the relationship between the two genders. She gives her father as an example and says: "I ask for the gentlemen not to accuse me of breaking the system and escaping from the prison of the veil, for it wasn't I who did this, gentlemen, but your brother, my father, whom God created absolutely free. For the sake of righteousness, he does not fear the blame of the blamers. He was the one who considered my imprisonment incompatible with God's justice and the best interest of family and society. He trusted the honor and mannerisms in me, so he sent me out to life and to the light unveiled. And upon resorting to reason, I favored his vision." She says: "Religion allowed what it allowed and prohibited what it prohibited, but man prohibited what's allowed and allowed what is prohibited." She emphasizes her religious reference by saying: "I have read in the Quran and *Sunnah* what seems to be guiding lights in freedom and women's freedom and rights that makes the sun shy when it rises." With reference to the Quranic verse about the veil, she says: "I read about ten interpretations that don't fit with one another, as if each and every one of the narrators aims in his interpretation at supporting what he sees, and I haven't come across any version that is supported by evidence." At the end of her book, she appeals [to the reader]:

"As for me, with that blessing, the blessing of freedom that was given to me by my father on his own, which I consider as his second blessing to me after the blessing of life, I used all the power given to me by God and the freedom of opinion to prove that God did not create woman as a mistake or as incomplete either in mind or in religion, and that true freedom is the

opposite of what the ignorant and foolish think. It is without a doubt the solid foundation and the cornerstone for civility, self-esteem, righteousness, perfection, and religion. I also proved that freedom may not be taken, but given. I ask of you gentlemen, to liberate your thoughts from innovations, falsehoods, and the influence of customs, and to grant – willingly – all women in whose honor you trust and who are my cherished and respectable sisters, your mothers, daughters, wives and sisters, that blessing, the blessing of freedom. As for those who don't deserve trust, I do not have an opinion of them, though I would like to see under the banner of freedom, not but the honest and proud souls of both genders" (38).

The book *The Second Message of Islam* summarizes the thoughts of Mahmoud Muhammad Taha (1909-1985) who believes that *Risalat Al Usool* [assets] is based on the major values of faith and the global humanitarian scope of the first Meccan message. He believes that *Risalat Al Furoo'* [branches] is only one example of its application in a specific time and place (Madina).

He says in this book: "It is an outrageous mistake for a man to think that the Islamic *Sharia* of the seventh century is suitable in all its details, to be applied to the twentieth century, for the difference between society in the seventh century and society in the twentieth century allows for no comparison. A well-informed person does not need to investigate deeply in that matter which explains itself. This leaves us with one of two choices: either Islam, as presented by the Infallible between the covers of the Quran, is able to absorb the energies of the twentieth century's society, taking the lead in guiding it through the arenas of legislation and ethics, or Islam's powers are depleted after organizing the society of the seventh century, and any similar subsequent societies. So humanity of the twentieth century seeks to leave Islam, and pursue solutions to its problems in other philosophies, and that is what no Muslim embraces. Nevertheless, Muslims are not aware of the necessity of developing *Sharia*" (39).

In the second message, there is a summary of the most important revolutionary ideas of Mahmoud Muhammad Taha. He doesn't consider slavery or capitalism fundamentals of Islam. He says on the issue of women: "Inequality between men and women isn't fundamental to Islam, complete equality between men and women is" (40); "A society where men and women are separated, is not noted in Islam", "Polygamy is not at all [present] in Islam" and "The veil is not an Islamic law, unveiling is" (41). Professor Taha is considered the first among Islamist reformers to advocate for an agreement to terminate all forms of discrimination against

women. For this reason, women mobilized in his party to release very important studies in 1975. We thought it would be important to republish one of them as an appendix to this book.

While history has given Hassan Al-Banna the title of “founder” of the largest fundamentalist movement in the Arab world, it would be difficult to predict the position that his brother Gamal Al-Banna, the atypical researcher who labors for a new *Fiqh*, would assume. The subject of women's rights and personal status laws take an important place in his thesis. He devoted a book to that purpose, summarizing his point of view (42). In that book he says: “The original justification for assuming responsibilities (in Islam) is ability, capacity, and competency, not gender, ancestry, descent, color, or kinship” (43). He defends Qasim Amin's opinion, considering it to originate from the core of the Islamic religion. He embraces – on the basis of following the example of the first Islamic society and human nature – the principle of mixing, where he says, “A mixed society in which men and women join in study, work and public activity is a society that is consistent with common sense and that any attempt to separate men and women is arbitrary and contrary to the nature of things” (44). And Al-Banna tackles the exaggerations in the issues of *Al-Hijab*, *Al-Niqab*, and isolation considering them alien to Islamic principles: “It is possible to say – without contradicting facts – that female society in the time of the Prophet was a society modest in dress, but it was not *niqabi*, though there were a number of *niqabi* women who were considered anomalous to the overall situation” (45). He says, “The veil in what is assured in the Quran does not refer to a veil or a *niqab*, but rather a door or a cover that obscures who is inside and requires the person entering to announce themselves. And that is the meaning that came in the Quran for the word “veil” which was accompanied by verses concerning permission [to enter]. Also, it was only mentioned in regards to the wives of the Prophet” (46).

Each time we review the problems that face women's liberation in both the Arab and the Islamic worlds, we stop at the catastrophic results of the dominance of the traditional *Fiqh* over the Islamic political movement and its impact on issues to which we keep going back. An opponent of the trend of backwardness such as Ibn Arabi describes a period in which women, according to the people of *Fiqh*, transformed into a devil of seduction: “*Al-Awra* of a woman is not but the genitalia as Allah says: “and they began to fasten together over themselves from the leaves of Paradise.” *Surat Al-A'araf* [the Heights] verse (22). So He made Adam and Eve equal in the covering of the two *Al-Awra* which are the genitals.”“*Surat Taha* [Ta-Ha], verse (121). Among texts like that in the *Meccan*

Conquests and readings by Ibn Uthaymeen Al-Wahhabi about the women's *niqab*, we realize how incriminating the fundamentalist interpretation of Islam is. And we realize the vital importance of the Islamic reformation, which stands on a single front with the allies of democracy and human rights in the Islamic world.

Marriage: Between Traditional *Fiqh* and CEDAW

From the beginning, we would like to point out that our discussion of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) moves forward essentially dealing with this agreement as a human-made text. The Convention is therefore as far as possible from sanctification and transcendence. CEDAW's power comes from it being the finest collective outcome that has been reached by the United Nations in any moment of human history. Our defense of CEDAW lies within this relative perception that stems from the fact that human rights is a project of human nature and that humans are the source of the project; therefore, it is unfinished and not sacred.

But in its current form, it is the best of what has been agreed upon between the various countries to protect the human being. We believe that women will not stop producing what is best and most suitable for humanity, with the changes experienced by humanity as a starting point. These changes call for the continuation of the possession of capability to create the organizations best suited for human beings and the conditions of human life and existence.

To address the points of intersection and contradiction between the CEDAW and the traditional, *Fiqhi* perception of marriage, we will adopt Violette Daguerre's multidisciplinary approach which takes into account the following:

1. Tradition and culture, and their impact on the system of prevailing values in a specific time and place;
2. The nature of the structure of the patriarchal family, and its durability in the face of building a balanced family relationship between the man and the woman;
3. The political use of these two factors, whether by the ruling authorities or by the political Islamic movement (47).

Article 16 of the Universal Declaration of Human Rights states that: *Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*

Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women confirmed this and gave more precise parameters. The Convention states:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - a. The same right to enter into marriage;
 - b. The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - c. The same rights and responsibilities during marriage and at its dissolution;
 - d. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - f. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - g. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - h. The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

How can we say that any state has committed to the convention against gender discrimination, if its government has made a reservation that keeps in effect the use of family and personal status laws even in the case of

contradiction between these laws and the fundamental principle of equality between man and woman? This is a question posed in most Islamic countries today.

The answer requires a better understanding of the issue of legislation concerning marriage since at least the last decades of the last Caliphate and recognized at least by the Sunni schools of *Fiqh*. The answer also requires a deeper analysis of the relationship between the two sexes that goes beyond textual rigidity.

Family law was the most durable bulwark in traditional legislations. These laws touch upon the sacred, the forbidden, sex, and bodily relationships. In this sense, the concept of *Haram* [forbidden by God] is present in all aspects of family law. But paradoxically, in this part of the world, the “sacred” sheds the aura of sanctification as a result of its heavy presence. Arab-Islamic social history shows the relativity of every institution and the idea of claiming continuity and the direct or indirect process of the construction of change and interruption each time the legal decision-makers felt that the judicial system was no longer able to function due to the facts of life exceeding [the content] of the texts.

Although the clergy, along with all currents of the Islamic political movement, considered the matter of marriage sacred and untouchable, the realities in any given day were not as the guards of ideology have claimed. Since the last century, we have witnessed changes in roles and structuration as well as judicial procedures. There is no doubt that significant steps have been taken since the Ottoman 1927 Personal Status Law and even the 1956 Personal Status Code in Tunisia.

However, it is difficult to talk about planned and rational development. In most cases are noticed dramatic decisions or demagoguery, rather than a process of incrementalism and building in a spirit of openness. Thus, for example, in 1927 the military establishment in Turkey adopted the Swiss Personal Status Law in a decision from above, while the same institution in Syria and Algeria put the brakes on the possibility of adopting a progressive personal status law in 1975 and 1984 respectively. Even though Egypt initiated a process to build an Egyptian judiciary independent of the Ottomans during the time of Muhammad Ali, Ottoman law has remained in effect in Egypt even after it fell out of use in Istanbul and Ankara in 1927.

This matter led to Ali Maher, the Egyptian Minister of Justice, saying on February 25, 1932: “*Milli* [pertaining to personal law for a particular confessional group] judiciary is the only aspect of the Egyptian judiciary untouched by the hand of reform until now. This aspect has remained in troubled condition for five centuries; the system is not suitable to the justice systems in Egypt, and there is nothing like it in enlightened countries. Despite this, it remains until now as it was when established, although the history of its creation goes back to the style of politics of the old Ottoman rule, and to the prevailing theories in the Middle Ages more than to the rules of legislation and to the needs of the citizens” (48).

The provisions of marriage in the Middle Ages (Arab and Western) were established according to the theory of the personality of laws (*Système de la Personnalité des Lois*), which determines that each person is put on civil or criminal trial according to the law of his religious belief. For Muslims, there were within the traditional schools a single judge and a single procedure – courts with a single judge. There was no hierarchy or appeal system in the courts. Interventions after the rulings were political rather than judiciary; [they took place through] the bureau of the ombudsman.

This primitive form [of judiciary] no longer exists anywhere in the world. Even in the Kingdom of Saudi Arabia, Iran, and Sudan, the principle of appeals and multiple judges in the judicial proceedings of every important case has been adopted.

In 1955, Egypt fully dissolved the legitimate, independent courts, as did Tunisia in 1956. Family laws and civil and criminal law were subjected to unified national courts, though personal status [law] continued to apply well-known Islamic principles. In Algeria, judges' courts function as courts of first instance, and judges in regular civil courts handle challenges. As for marital cases, the French courts remained operating within the framework of a liberal reading of the Sunni schools of jurisprudence; we find shifts between *Hanafi*, *Shafiee*, and *Maliki*, in harmony with and closest to the spirit of the age, a state of affairs which remained in effect until 1984, before which Algerian women benefited from the legal void in this regard! With the Algerian Family law, women returned to the “house of obedience”, and the exclamation of three divorces once again decides the fate of the woman and the family (49).

In many cases, oppression exceeds the limits of traditional jurisprudence, whether in criminal punishment for women having sex, which exceeds the men's punishment in several Muslim countries (despite their equality in

Fiqh!), and in the continuation of the custom of “honor crime”, or in forbidding married women from giving their citizenship to their children in many Arab countries such as Egypt and Lebanon in blatant contradiction with the 9th Article of CEDAW, which states:

“States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

States Parties shall grant women equal rights with men with respect to the nationality of their children.”

The issue here is the result of a patriarchal tradition and a masculine mentality that is based on the principle of gender discrimination in rights and does not have any jurisprudential basis.

Let's turn to the implications of the concept of obedience in personal status laws:

With respect to content, there are points that lie within the zone of “taboo” and “the forbidden” in most Arab countries as in the case of marriage of a Muslim woman to a non-Muslim man or the issue of the distribution of inheritance, as well as polygamy. These are still [ruled upon] within the Islamic provisions in the old jurisprudential traditions. However, with the exception of Saudi Arabia and similar countries from among the neighboring micro-states, it is difficult to discuss the meaning of religious marriage or civil marriage. The most accurate [manner of speaking], sometimes, is to discuss it as a situation of “assembling”, sometimes reasonably and often arbitrarily, between the old and the new, between natural and citizen affiliation, and between the “divine right” and human rights.

Criticism of the classical *Fiqhi* perception of marriage is not only the result of secular trends. Here, Nasr Hamid Abu Zayd mentions an important passage by Imam Muhammad Abdu: “I’ve seen in the books of jurists that they define marriage as being a contract by which a man gains ownership over a woman’s assets. And I haven’t found a word that indicates that there is anything else between the husband and the wife other than the enjoyment of physical pleasure; and all of these writings are free of any reference to moral duties, which are the greatest of what two cultivated

individuals request from one another. And I have seen in the Noble Quran pieces of speech which apply to marriage and that are worthy of defining it. I do not know any law from among the laws of the nations that have reached to the highest degrees of civilization and brought better than it [the Quran]. God Almighty said: 'It is that He created for you wives from among yourselves to find repose in them and put between you affection and mercy' (Surat Ar-rom 21). Whoever compares the first definition, which emanates from the *Fiqh* of the jurists, and the second definition which came down from God, can see for his or herself the extent to which the degeneration of women has reached in the opinion of our jurists, and has spread from them to Muslims in general. It is no surprise after all this, to see the lowly level to which marriage has fallen; it has become a contract, the sole purpose of which is for the man to enjoy the woman's body to take pleasure from it. This has been followed by the subsequent subordinate rulings which they arranged according to this heinous origin" (50).

And in the domain of marriage, Imam Muhammad Abdu stressed that polygamy constitutes severe contempt for women. He stated about its permissibility that this custom should be abolished, justifying this claim with three reasons:

- Because the condition of polygamy is achieving fairness, and this condition is inevitably unfulfilled; therefore if one in a million is found, it is not correct to make it a standard.
- Due to the predominance of bad treatment by men of their wives in cases of polygamy and denying them their rights.
- Due to the fact that the origin of corruption and hostility between the children [of one man] is the result of having different mothers (51). The Imam added to his approach gender equality in the right to divorce.

Egyptian Gamal Al-Banna joins the Moroccan reformist Al-Tahar Haddad and Mahmoud Muhammad Taha on the subject of personal status, demanding its reformation. "We can say that the personal status laws in Egypt, which are derived from the rulings of the jurists and put in place a thousand years ago, are considered a disgrace to standards of justice and must be changed in accordance with the Noble Quran and the principles of the modern *Fiqh*" (52).

There is no doubt that the hostility towards the right of reformist trends in Islam leaves its trace on the democratic modernization of legislation in Arab countries. Perhaps, this is what gives a special importance to the Islamic examples in secular societies (Muslims in some European countries) or to societies of multiple religions and sects (i.e. the Lebanese model). These societies are more confrontational towards the weaknesses and flaws in the traditional marriage, and thus they constitute, in one way or another, a laboratory of innovation for the potential forms of a family, which, based on what humanity has arrived at so far, respect in their rules the rights of women and children. From this point, for example, stems the importance of the struggle for an optional civil marriage in Lebanon.

While for democrats and human rights defenders this marriage is a non-negotiable right, in the Lebanese reality the strength of this suggestion comes from the dead end that has been reached by the enclosed religious and confessional institution of marriage in this country. It is the necessity and the society's need which imposes itself on the lawmaker, rather than the mere weight of the secular and democratic trend in Lebanon. This explains the enlightened forces' proposal of a project of a Personal Status law that combines the principle of justice and the mandates of reality. At the same time it explains the demagogic attack of all sectarian forces against the legislative project despite its being non-obligatory, fearing the disposition of people towards the form the most harmonious with the spirit of their era and their human nature (53).

Also evident is the importance of the interpretation of Arab-Islamic history and the interpretation of contemporary reformers of the issues concerning marriage and women. We are reminded by Sheikh Abdullah Al-Alayli, "The marriage contract in Islam is a civil contract in the complete meaning of this term, except in some aspects, most of them financial. These aspects cannot be considered to the point of taking the contract out of this [civil] characterization" (p. 117). The Shiite *Jaafari* left a wide margin for legitimate sexual relationships through authorizing the *Zawaj Al-Mut'a* [pleasure marriage] that was known in the time of the Prophet Muhammad. The authorization of this marriage and its acceptance in the Sunni centers in the Gulf and the Indian subcontinent gives us an idea of the social need to loosen the shackles constraining the two genders, though temporary marriage brought with it the patriarchal attributes of permanent marriage.

The protest against the anti-woman crowd that accumulated in the Middle Ages is no longer confined to progressives and the pioneers of reform. The conservative sheikh Muhammad Al-Ghazali says: "I know that there are insubstantial effects that were discarded by advocates of scientific

accuracy in the examination of [Islamic] narrative and haven't been mentioned by a scholar who tells of *Hadith* nor was it dealt with professionally by a jurist who conveys facts about Islam such as what was told by Fatima who said that a woman should never see a man and should never be seen by a man, and like the *Hadith* about the Prophet preventing some of his wives from seeing Abdullah Ibn Umm Maktoum. All these stories are not worth the ink they are written in, and it is a phenomenon that contradicts the content of the Quran and *Sunnah* which has been proven and affirmed" (54).

The supporters of renewal agree, to a large extent, with Gamal Al-Banna's stance when he said, "The new *Fiqh* considers the issue of women as part of *Sharia*, and makes the primary source of *Sharia* reason, because *Sharia* has nothing to do with the essence of God, nor with the world of *Saam'iyat* [that which is based on the Revelation] in which the doctrine specializes. Thus, *Fiqh* determines its position regarding women in the light of reason, which manages all policies, trends, and behaviors, both concerning the history of the development of the women's movement worldwide, or concerning Islamic history" (55).

Isn't it an indescribable farce to forbid women from traveling without a *mahram* [a male relative] in some countries, while in other countries Muslim women obtain a passport without the permission of their husband, and a number of them have travelled alone to Madina to join the [other] Muslims? Isn't it funny to discuss women's political rights while Sowda, Azzarqaa, Cinan, Darmieh and Ekrshah were the most important orators of the Battle of Safeen? Haven't our religious "jurists" tarried in discussing the issue of the female Imam, while we know that Ibn Arabi, in one of the hardest moments of our history, allowed women to become Imams? (56)

As Violette Daguerre also indicates in her study referenced above, "The relative progress made in the Arab region was often in favor of the man, for whom new opportunities opened up and who obtained many freedoms which are not permitted for women. This established man's control over the economic, social, cultural, legal and political spheres. Women were not fortunate enough in gaining education and professional work to allow them to sufficiently change the balance of power in their favor. Even paid work, if available, didn't allow women to achieve so that they might help their families to improve their living situation. This increased the segregation between spouses and members of the family and also increased the tension in relationships governed by the logic of power, control and exploitation enshrined by religion, culture, and law.

Although education and employment opportunities for girls today have become more common, unfortunately, most of the time they do not aim for more than improving their chances of marriage and taking care of their husband and raising children. For women who are prepared since childhood for this role and are encouraged to show their femininity are living at the same time a life of mental and physical repression and dispossession by their father's family and then by their husband's family. This occurs through strict laws in the shadow of religious and legal prohibition and an atmosphere of social oppression. The man, whether it is the father, brother, husband, or son, has the right to control the woman's freedom, movement, and existence in order to preserve the family's honor, seeing her as only a tool for sex, pleasure, and procreation" (57).

In my opinion, the main problem is in the fact that the Islamic societies have accumulated through the centuries restrictions that gave rise to the semi-mythological/semi-tribal society of the *Harem*. This was reflected in the details of the existence of women as a human being from the cradle to the grave. Women were deprived from learning science and participating in public affairs and the world of innovation; they were even forbidden, in the name of God, from entering mosques. It is useful to remember that a tolerant man like Abdul Qadir Al-Jazairi was afraid of allowing women to be educated, and that the poet Al-Jawahiri fought a great battle in Najaf in 1927 in order to open a school for girls, and that conservative clerics launched an open war against him. Only in the mid-1950s did Saudi Arabia accept the principle of educating girls. Nobody can contest that the daughter of Sheikh Abdul Salam in Morocco Mrs. Nadia Yassine's education, participation in public affairs, and fighting her father's battle for example, were all an outcome of the struggles waged by agents of enlightenment and waged by women for the sake of freedom and equality. She can do what she is doing today, because before her, women like Nabawiyah Moussa, Huda Shaarawi, Habiba Al-Mnchari, and Nazira Zainuddin bravely faced the social backwardness and conservative clerics and all the volunteers who defended the virility of patriarchy.

The battle for women's rights is considered one of the most difficult battles of change in the Arab world, and I think that what is happening today in Morocco, Lebanon and Iran gives an example of the ability to move traditional societies whenever we raise the issue of women's emancipation, or emancipation from the static view of religion. It is ironic how the most intolerant people in society have allied with the most active people in the universities to prevent any change towards gender equality. This battle is not just about moving from the patriarchal family to a family dominated by equality and the sharing of material needs and decision-making, which in

itself would be a great historic achievement, but also paving the way to move from a tribal society to a civil society.

The Prophet of Islam gave the most valuable laws of his era to people that were the least ready to accept them. Today, the conservatives are proposing, in the name of Islam itself, the most backward laws of our time, to peoples that are the most in need and more ready to accept the rights of women agreed upon as a common value among the people in various human rights conventions.

In the face of globalization, which removes what remains of the spirit of solidarity, cooperation, and respect for others and for the struggle for human dignity, we are in need, more than any time in the past, of every woman in every place; in need of our dignity through women and with women; we are in need of her dignity and her rights as an undivided part of the rights of men. We are in need of women for the sake of the infant to whom she bestows mental well-being in his first years and grants him the necessary giving and love, for the sake of every political system and social community that needs the necessary “injection” [to protect against] the economy of violence and aggression, and for the sake of preserving our required share in the dream of change and our ambition [to play] a fundamental role in combatting barbarism in the depths of our being and around us.

Notes

1. Haytham Manna; *Women in Islam*. Dar Al-Hadaathah, Beirut, 1980, p. 80.
2. Dr. Mohammad Khatami; *Readings in Religion, Islam, and the Era*. Dar Al-Jadeed, 3rd edition, 1999, p. 29.
3. Mansour Fahmi; *La condition de la femme dans la tradition de l'Islamisme*, Paris, 1913.
4. Haytham Manna; *The Production of Man in the East of the Mediterranean*, Dar An-niddal, Beirut, 1986, pp. 89, 90.
5. There are many controversies and a shortage of references related to this era. This summary is merely an introduction. Discussions with a number of anthropologists and historians show a general lack of research and study within the Arab Bedouin societies. While Jawad Ali made a major reporting effort in his work *The Expanded History of Arabs Before Islam*, Islamists stand on the cusp of Western analysis (liberal or Marxist). So Sayyid Qutb adds nothing valuable for us, except for a citation taken from Al-Barrawi in his book *Towards an Islamic Society*. It seems that the duty of Arab researchers is to do their best to research beyond a simple and superficial approach.
6. See: Haytham Manna; *The Arab-Islamic Society from Muhammad to Ali*, Al-Razi Publications, Paris, 1986, Chapter of Yathrib, pp. 15, 24.
7. Haytham Manna; *Women in Islam*, pp. 29, 30, 31.
8. Haytham Manna; *Islam and the Islamic Reform*, *Encyclopedia of Human Rights*, Part II, to be issued soon.
9. Hussein Aloudat; *The Arab Woman in Religion and Society*, Dar Al-Ahali, Damascus, 1996, pp. 71, 72.
10. Mansour Fahmi; *The Status of Women in Islam*, Al-Jamal Publications, 1997, Chapter One, except the chapter of *The Social History of the Veil*, which I already have translated and published in my book *The Veil*, 1988. It is necessary to review the rest of the chapters, especially with regard to citations for which the original Arabic text was not revised. French readers can find the republished original: Mansour Fahmi; *La condition de la femme en Islam*, prf. De M. Harbi, post. De H. Manna, Allia, Paris, 1990.
11. *Tafsir Al-Tabari*; Chapter 18, p. 55. Also, Manna; *The Arab-Islamic Society*, p. 27.

12. Haytham Manna; Shortuniversal Encyclopedia, the first chapter, The article: Veil, Al-Ahali, Bissan, Beirut and Damascus, 2000.
13. See: Manna; The Arab-Islamic Society, p. 41.
14. Jawad Ali; The Expanded History of Arabs before Islam, First Edition, Chapter 6, p. 174.
15. Manna; Women in Islam, p. 43.
16. Hussein Aloudat; The Arab Woman, pp. 91, 92.
17. Haytham Manna; The Patriarchal Family in Islam, Arab Studies, Beirut, September 1973.
18. A collection of *Hadith* is available and referenced in: Manna, Women in Islam.
19. Quotation from: Violette Daguerre and Haytham Manna; Veil, Circumcision, and Marriage in Islam. A lecture presented by Violet in Gaza upon invitation by Gaza Program for Mental Health, Women's Conference in Palestine, November 21 to 23, 1999.
20. Al-Hussein Al-Carabisi, articles about Kharijites, manuscript of the National Library in Paris 1453, Sheet 34A.
21. Haytham Manna, The Woman! Al-Jamal Publications, Cologne, 1988, p. 60. Al-Jaheez; The Animal, Chapter 2, p. 268, chapter 6, p. 439. Also incidents of the year 67 from The History of Al-Tabari.
22. Sylvester de Sasi, Arab Selections. Shining from the book of Druze, pp. 290, 291, 292.
23. The Great Message of Girls, manuscript of the National Library in Paris, No. 1432, Sheet 136.
24. Charter of the Women, manuscript of the National Library in Paris, No. 1409, sheet 42. Unitarian Druze have others messages regarding women's education, such as the Great Message of Women and the Small Message of Women, both as manuscripts at the National Library.
25. Haytham Manna; The Woman! Al-Jamal Publications, 1988, see the Problem of the West paragraph, p. 16.
26. Ibid, p. 18.
27. Sheikh Abdullah Al-Alayli; Where is the Mistake? Correcting Concepts and Reformative View, Dar Al-Jadeed, 2nd edition (first edition: Dar Al-Ilm Lil Malayin 1978), 1992, p. 109.

28. Saber Nael, Jamaluddin Al-Afghani; Short Universal Encyclopedia of Human Rights, Al-Ahali and Bissan, Damascus-Beirut, 2000.
29. Article about Qasim Amin is in the same source.
30. Abd El-Razak El-Sanhuri; What is the basis of the revision of the Egyptian Civil Code? 1933, The Golden Book of the Civil Courts, Judges Club, 2nd edition, Rose Al-Youssef Press, p. 120.
31. Ibid, p. 121.
32. See: Muhammad Almi, Alhaddad, and Fikr Al-Ikhtilaf, readings in anonymous documents, Akwas, Tunisia, 1999, p. 49.
33. Ibid, p.p. 49-51.
34. See: Tahar Haddad, Our Woman in Law and Society, Tunisia 1348/1930, ceremony for honoring the book of Tahar Haddad; Our Woman in Law and Society, Akwas Series, Tunisia, 1999. Ahmed Khalid, article about Tahar Haddad in Reflections on Human Rights, stated. Haytham Manna; Islamic Reformation and Human Rights, Riwak Arabi, Cairo Institute for Human Rights Studies, No. 14.
35. The complete text of the letter published in Muhammad Almi, Alhaddad, and Fikr Al-Ikhtilaf, pp. 26, 30.
36. Sheikh Abdullah Al-Alayli; Where is the Mistake? Correcting Concepts and Reformative View, Dar Al-Jadeed, 2nd edition, 1992, p. 17.
37. Ibid, p. 16.
38. See article: Nazira Zainuddin, Reflections on Human Rights, Stated.
39. I adopted the citations from the book The Second Message of Islam, the special edition issued by the Sudanese Organization for Human Rights, January 1996.
40. The second letter, p. 104.
41. Ibid, pp. 109, 105, 108, respectively.
42. Muslim Women between the Quranic Liberation and Jurists' Restriction, Dar Al-Fikr Al-Islami, Cairo, 1998.
43. Ibid, p. 19.
44. Ibid, p. 188.
45. Ibid, p. 35.
46. Ibid, p. 31.

47. Violette Daguerre; the Convention on the Elimination of All Forms of Discrimination against Women, The Problem of Privacy in Islamic Countries, a lecture delivered at the second annual training session of the Moroccan Youth Centre for Human Rights, March 31, 2000, Agadir.
48. From the sermon of Ali Maher, Minister of Justice, at the opening of the Reform and Coordination of the Milli Judiciary, February 25, 1932, Golden Book of the Civil Courts, 1883 to 1933, Judges Club, second edition, 1990, p. 277.
49. Haytham Manna; LA REFORME BLOQUEE, Mouaten, Paris, 1998.
50. Nasr Hamid Abu Zayd; Circles of Fear, the Arab Cultural Center, Casablanca, Beirut, 1999, p. 218, taken from the complete works. The Imam published this text in the Egyptian Al-Waqqa'a Newspaper in March 07, 1881.
51. Ibid, pp. 219, 220.
52. Muslim Women between the Quranic Liberation and Jurists' Restriction, p. 125.
53. It is necessary that democrats and human rights defenders review the text of the draft of the Optional Civil Law of Personal Status, which was approved by the meeting for the Optional Civil Law of Personal Status, which was initiated by 75 bodies and many individuals (13 parties and political movements, 11 human rights boards, 17 different civil societies, seven women societies, 12 student and youth groups, seven cultural boards, four environmental boards, and four union bodies). In April 1999, the meeting circulated the text about civil marriage in Lebanon. See also: Violette Daguerre, Civil Marriage in Lebanon is a Right and a Need, a report issued by the Arab Commission for Human Rights, 1998.
54. Al-Shaab Newspaper, Cairo, "This is Our Religion" Sheikh Muhammad Al-Ghazali, 05/14/1994.
55. Gamal Al-Banna; Muslim Women between the Quranic Liberation and Jurists' Restriction, House of Islamic Thought, Cairo, 1998, p. 185.
56. A reference to Ibn Arabi's statement in The Meccan Conquests: "Some people allowed women to be an Imam of both men and women, some of them prevented this completely, and others have allowed it but just for women without men). Prophet Muhammad (PBUH) said that some women have the ability [to become an Imam], he also said that some men are more capable than women in

perfection, because of prophecy, and prophecy is Imamhood. So a woman's Imamhood is legitimate and permitting her Imamhood is the right course of action. People who claim the opposite and there is no Quranic text for the opposed in this matter" (issued edition, Beirut, chapter 1, p. 447). Many Sufis say that the Quranic text "But the men have a degree over them" explains male prophecy. The discrimination stopped at the last prophecy, that of Muhammad. Dr. Muhammad Salim Al-Awa begins his argument on the principle of Imamate from his contemporary readings on the political and civil participations of women. He based his opinion on the concept that the Quran considered the believing men and believing women allies of one another, regardless of gender. The youth of the *Kharijites* had adopted this verse, according to some historians, to inaugurate Ghazala as their Imam.

57. Violette Daguerre, The CIDAW, stated.

The Crime of Stoning: Between *Fiqh*, History, and Human Rights

In the eighteenth century, as the defense of the integrity of the mind and body burst onto the scene in Europe, an alliance was established between the *Hanbali* preacher from the Al-Sheikh family and Muhammad Bin Saud. This alliance was based on 'Eye for eye' to borrow the phrase from Bin Abd Al-Wahab himself. As the *Wahhabi* historians say, Ibn Abd Al-Wahab rebuked polytheism and heresy and "ordered people to do *Al-ma'ruf* [good deeds] and compelled them to do so by force. And whoever scorned *Al-ma'ruf*, which God required of him, he [Al-Wahab] would oblige him to do it and punish him if he left it [*Al-ma'ruf*], and he [Al-Wahab] would restrain him from reprehensible acts, and deter him from them, and he enforced [these obligations], such as [by] killing magicians, flogging drunks, cutting off the hands of thieves, and stoning the adulterer." This school might have disappeared, if it were not for the "holy war" it waged that played a historical role in uniting the Arabian Peninsula. Then came the oil revolution which made Wahhabism a preserved and necessary ideology for export using oil wealth to confront the progressive tide in the Arab and Islamic worlds.

Wahhabism brought the entire *Hanbali* legacy which was intensified by Ibn Taymiyyah in *takfiri fatwas* handed down by him and closing the door of renewal and *Ijtihad* in Islam. The ideological war between Wahhabism and *Al-Jaafari* [school] and jurists of the Ottoman state were among the most severe. The Muslim became a hostage between them and Islamic criminal law became an auction among the jurists. Even today, corporal punishments are administered in Iran and Saudi Arabia in a manner unknown in the *Rashidi*, *Abbasi*, or *Ayyoubi* periods. Just as Europe turned its back to the Arabic-Islamic period of enlightenment, preferring the darkness of the Church in the Middle Ages, Salafism, in all its expressions, has decisively stood in the way of the era of European enlightenment. It insisted on corporal punishment, stoning, and coercing worship and rituals which violate not only the spirit of the age, but also, before all else, the spirit of Islam and the Noble Quran. Even the Muslim Brotherhood movement didn't survive this traditional approach. Even today, 60 years after the execution of Abdul Qadir Odeh, his book *Al-Tashri' Al-Jina'y Fi Al-Islam* [*Criminal Legislation in Islam*] is untouchable by his followers, despite that more than one study has shown that the writer cited the four Imams more than he cited the Quran and the *Hadith*. His methodology does not mean only the freezing and affixation of the idea of criminal law making it unaccepting of development and adaptation to the problems of

the time and place, but it also means defending the system of “hurting people” in human society that fights for its protection. Do not be surprised by Said Hawa, a Muslim brotherhood ideologist, who considers the exclusivity and uniqueness of Islam to be based on the regime of “hurting people” and presents seven models of “hurting people” including the adulterer (Islam, p. 591).

Arab law schools brought new interpretations of the criminal punishments benefitting from Western legislation and the Arab-Islamic legal heritage. The countries independent of the Ottoman Empire followed the Empire’s decision to abolish corporal punishment from the Penal Code in 1858. After that, the Constitution of 1878 stated in Article 26 that torture would be abolished.

A number of Arab and Muslim intellectuals stressed the adoption of the principle of mental and physical well-being as a fundamental human right. Among them, as examples, were Abdul Rahman Al-Kawakbi, Jamil Sidky Al-Zahawi, Abd El-Razak El-Sanhuri, Muhammad Mandour, Mahmoud Azmi, Taha Hussein, Ali Abdel Razek, Ali Al-Wardi, Tahar Haddad, Mahmoud Muhammad Taha, and Sheikh Abdullah Al-Alayli. The latter issued his book *Ayna Al-Khata’?* [*Where is the Mistake?*] in 1978, in which he confirmed that stoning doesn’t exist in Islam. In a similar vein, the Scandinavian Institute for Human Rights published a book of the Islamic preacher Muhammad Habash under the title *Al-'Uqubat Al-Jasadiya wa Al-Karama Al-Insaniya, Nahwa Fiqh Islami Munahid Lil-Ta'theeb* [*Corporal Punishment and Human Dignity, Towards an Islamic Anti-Torture Fiqh*] (Geneva, 2015).

No criminal punishment includes contradiction, chaos, and turmoil as the punishment of stoning in Islam. This penalty was restored according to demand in Riyadh, Tehran, and the territories controlled by the Taliban, the Shabab Al-Mujahideen organization, Boko Haram, Jabhat Al-Nusra, and ISIS, who reduce Islam to amputation, flogging, and stoning. Perhaps the story of Muhammad Abu Zahra and stoning best expresses the internal contradiction in the logic of prevailing *Fiqh*.

In his memoir, Sheikh Yusuf Al-Qaradawi, when talking about the Islamic Law Seminar Conference held in the Libyan city of Bayda’ in 1972, says:

In this seminar, Sheikh Abu Zahra detonated a Fiqhi bomb that agitated the members of the conference; he surprised them with his new opinion.

The Sheikh, God's mercy be upon him, stood up at the conference and said, "I kept a Fiqh opinion to myself for more than twenty years, and I only talked about it to Dr. Abdul Aziz Amer." He asked Dr. Abdul Aziz, "Isn't this true?" Dr. Abdul-Aziz answered, "Yes." Sheikh Abu Zahra continued, "It is time for me to expose my opinion before I die and God asks me, 'Why did you withhold your knowledge from people?' This opinion regards the issue of "stoning" in the punishment of adultery. In my opinion, stoning was a Jewish law, approved by the Prophet Muhammad in the beginning of his prophesy, and then it was changed to flogging in Surat Al-Nur." Sheikh Abu Zuhra added, "I have three pieces of evidence":

"Firstly: God says, 'But once they are sheltered in marriage, if they should commit adultery, then for them is half the punishment for free [unmarried] women.' (Surat An-Nisa', 26). The sentence of stoning couldn't be applied as a half. Thus, it is affirmed that the torment in this verse is mentioned in Surat Al-Nur: 'And let a group of the believers witness their punishment.' (Surat Al-Nur, 2)."

"Secondly: What Bukhari said in his Sahih on Abdullah Bin Awfa being asked about stoning, 'was it after Surat Al-Nur or before?' He said, 'I do not know. It is very likely that the punishment of stoning existed before Surat Al-Nur, which replaced it.'"

"Thirdly: The speech on which they relied. They said, 'It is part of the Quran but then its recitation was [changed] and its verdict remained a matter not upheld by reason. Why [change] the recitation, but the law remained? What is said that "it was in the Quran, but then an animal came and ate, is not accepted by reason." Once the Sheikh finished his speech, most of the attendees revolted against him. Some of them stood up and responded to him with evidence from what is mentioned in the books of Fiqh, but the Sheikh affirmed his opinion.

Al-Qaradawi said that he then met him after the adjournment of the meeting. "I said to him, 'Oh Maulana, my opinion is close to yours, but doesn't quite accept it.' He [the Sheikh] said, 'What is it?' I said, 'In the Hadith of Sahih we read: Al-Bakr bi Al-Bakr [a lesser punishment for a never-before married person guilty of adultery]: One hundred lashes and exile for one year; and Al-Thayeb bi Al-Thayeb [a more severe punishment to someone who has been married]: one hundred lashes and stoning."

"He said, 'What did you take from this Hadith?' I replied: 'You know, Your Excellence, what Hanafi jurists say about the first part of the Hadith:

‘The punishment is flogging, while banishment or exile is a policy or rebuke entrusted to the opinion of the Imam, but it is not required in every case.’” (This means that the opinion of *Hanafism*, which is one of the four schools of Sunni Islam, is contrary to the opinion of the rest of the schools. – the author)

‘But the sheikh did not agree with my opinion. He said to me: Youssef, is it reasonable that Muhammad Bin Abdullah, sent by God as a mercy, throws stones at peoples until they are dead?’ I paused at the words of Sheikh Abu Zahra: He concealed his opinion for twenty years. Why did he do that? And why didn’t he mention it in a course, lecture, book, or an article? He did so due to fear of a public commotion, people pointing fingers at him and defaming him, as happened to him in this symposium. And I said to myself: ‘How many opinions and bold new interpretations remain trapped in their owner’s mind, until they die with them; no one hears about them, and no one cites them!’” (Citation of Al-Qaradawi finished.)

Is there better evidence than this story of the intellectual terrorism experienced by not only society and intellectuals but even religious jurists?

A glimpse from history

The oldest stories about stoning date back to Muwatta Al-Imam Malik. In Muhammad Al-Shaybani’s narrative, under the title *Stoning, Number 693* and commented on and reviewed by Abdul Wahhab Abdul Latif, came the following *Hadith*: “Malik related to me that Yahya Ibn Said heard Said Ibn Al-Musayyab say, “When Omar Ibn Al-Khattab came from Mina, he made his camel kneel at Al-Abtah, and then he gathered a pile of small stones and cast his cloak over them and dropped to the ground. Then he raised his hands to the sky and said, ‘O Allah! I have become old and my strength has weakened. My flock is scattered. Take me to You with nothing missed out and without having neglected anything.’ Then he went to Madina and addressed the people. He said, ‘People! Sunan have been laid down for you. Obligations have been placed upon you. You have been left with a clear way unless you lead people astray right and left.’ He struck one of his hands on the other and then said, ‘Take care lest you destroy the *Aayat* of stoning so that one will say, “We do not find two hadds in the Book of Allah.” The Messenger of Allah, may Allah bless him and grant him peace, stoned, so we have stoned. By He in Whose Hand my self is, had it not been that people would say that Omar Ibn Al-Khattab has added to the Book of Allah ta- ala, we would have written it, “The full-grown man and

the full-grown woman, stone them absolutely.” We have certainly recited that.“

Malik said, “Yahya Ibn Said said Said Ibn Al-Musayyab said, 'Dhu'l-Hijja had not passed before Omar was murdered, may Allah have mercy on him.” (p. 241 Muwatta Malik. Second Edition. The Scientific Library).

The original narrator of this tale is Said Ibn Al-Musayyab, who says that Omar Ibn Al-Khattab delivered a speech to them in which he confirms the presence of the punishment of stoning in the Holy Quran in a verse that was canceled. But Said Ibn Al-Musayyab was two years old when Omar Ibn Al-Khattab was killed, so how could a crawling baby tell stories about Omar Ibn Al-Khattab?

The *Hadith* of Muwatta did not, after the death of Imam Malik 197 A.H., convince skeptics [against] the punishment of stoning. This brought Imam Bukhari who died in the year 256 A.H. to produce another narrative, which says that Al-Shaybani asked Abdullah Ibn Abi Awfa, one of the Prophet’s later companions if the Messenger of Allah practiced stoning. He said, “Yes.” I said, “Before or after Surat Al-Nur? He said, “I do not know” (chapter 8, p. 204). Imam Muslim told the same story according to two different sources. That which *Ithnaashari* Shiites relate from the prophetic *Hadith* and sayings of Imam Ali are no more documented or precise. What happened is that a collection of unknown stories and *Hadith* were added over half a century to make the Orthodox story, of both Sunnis and Shiites, more coherent.

Stop stoning

In our opinion, stoning is a crime within an intensely wrong judiciary, in the wrong place and time, and in the name of a fair religion and against a dignified human being. The problem is that when we [people] deal with this kind of questions, we become below the level of the historical moment and out of critical thinking in. Since *Kharijites* and *Mu'tazila*, and even the *Hanafis* did not find religious evidence for stoning and they rejected it. We are still prisoners of the Islamic conservator and obscurantist vision, which adopts this [stoning] based on a rule from the Torah that infiltrated Islamic jurisprudence. In the 18 chapters of his book *Al-Muntazam fi Tarikh Al-Muluk wa Al-Umam* [*The Constant in the History of Kings and Nations*], the *Hanabli* historian Ibn Al-Jawzi does not mention a single story of stoning in the stories of Abbasid history. The only story mentioned [where stoning might have come up] is the incident of a Jewish man committing

adultery with a Muslim married woman in 336 A.H. A police officer hit the Jew as a punishment (Chapter 13).

In the International Islamic Forum for Dialogue, the Saudi delegation acknowledged that: "There were only about fourteen stoning incidents during fourteen centuries of Islam." So how did the verse transform and these tens of incidents become dozens and even hundreds of incidents in contemporary Islamic countries? While since 2007 Dr. Hassan Al-Turabi considered stoning illegal in Islam, Tariq Ramadan, the Islamic academic, demanded the suspension of corporal punishment in Islamic countries. And today, a large number of Islamic researchers demand a contemporary *Fiqh* of objectives, in other words that legal provisions should be [made] in light of purposes and consequences, not forms and images, in line with the concept of human dignity in the Quran and the International Bill of Human Rights, and, to borrow an expression of Al-Alayli, in its target not its literal rigidity.

The battle against stoning didn't start yesterday, or with the European and Western stance on Sakineh Ashtiani. Of course, the issue of the Iranian Sakineh drew attention to this matter internationally for multiple purposes that are not necessarily innocent. But at a time when we notice a constriction and stagnation in discussing corporal punishment and torture in the Arab-Islamic world, there is no fault with reformers and democrats insisting on closing this file simply because of the presence of media and political parasites who transformed into defenders of women's rights.

It is an indignation that the nominal Islamic movement which relies on a literal and narrow interpretation of the Quranic verses and the sacred nature of the behavior of the *Sahaba* or imams or *Aal Al-Bayt* (the Prophet's family), rises at the expense of a reformist, enlightened, and civil discourse, which became bolstered and strong in Islamic societies. This discourse even affects the Islamic movements themselves. In 2002, the head of the judicial authority in Iran issued a decree banning stoning.

After Ahmadinejad's success in the elections, human rights organizations noticed demands by conservatives to again implement this penalty. They verified this in 2006, which led Iranian rights activists (men and women) to launch a campaign under the name "Stop Stoning Forever". This campaign helped save four women and one man from stoning. It could be said that the issue of stoning in Iran is one of the issues of conflict between the puritanical direction and the reformist direction. However, the geography

of the opposition to corporal punishments and the crimes of death penalty and stoning is still very limited in the Arab and Islamic worlds.

There is no doubt, that the employment of the sacred for the continuation of sanctions which impair a person's right to live and physical and psychological health delays the birth of a strong public opinion that demands the abolition of corporal punishment. I have no doubt that such a battle is unavoidable, because Islamic extremism makes it the basic symbolic expression of applying Islamic law. We only need to remember General Dhiaa' Al-Haq, General Nimeiri, General Al-Bashir, and others, who magically turned from icons of dictatorship into Muslim princes simply through their arbitrary and haphazard application of corporal punishment. And today, the *Takfiri* tendencies continue this method as a part of the "industry of savagery" covered by the cloak of religion. But, as a misshapen and debunked [application of] this penalty is called for, the processes of female captivity, sale of children, and rape of woman's humanity through myths produced by *Takfiri* doctrinal rules that rely on their "legitimate courts" are ongoing.

Did we need all these atrocities to say that these barbaric practices do not belong to a religion, philosophy, or doctrine? And that the liberation of Muslims from them is an obligatory condition for Muslims to once again [shape] history?

Extension

Women's Rights in Religion, *Sharia*, and *Fiqh*

Women's Rights in Religion, *Sharia*, and *Fiqh*

On the occasion of International Women's Year, the "Republican Brotherhood" movement in Sudan issued sixteen booklets that handle the subject of women and their basic problems in Islamic society in general, and Sudanese society in particular. The sisters [Muslim female members] issued these studies under the supervision of the movement's intellectual founder Sheikh Mahmoud Muhammad Taha, who, since he founded this movement in 1945, suffered many times from a number of *Takfiri* campaigns in the fifties, sixties, and seventies that resulted in his execution in 1985 by Marshal Jaafar Al-Numeiri who became, by the way, the "Prince of the Faithful". Here, I republish an important excerpt from one of these booklets that directly addresses the subject of the book and gives an idea about Professor Taha and his students' point of view on women's rights in Islam:

Introduction

This is our eleventh publication on the occasion of International Women Year 1975. In our previous publications, we have dealt with a number of different aspects of women's rights issues, and have put forth the appropriate solutions from within religion. In this publication, we will discuss one of the most important topics related to women, which is the issue of the personal status. In order for women's freedom and complete equality with men to apply, it is necessary to develop the Personal Status Law to suit the situation of the modern woman. And in order to demand this development, and work for it, women's leaderships must conduct an in-depth and careful study of the laws that regulate women's relationships with men, the currently applied laws in legitimate courts, and the study of the status of women in the Islamic *Sharia*. Then, it is necessary to become acquainted with the solutions that we, Republicans, offer as an alternative to the laws in effect, which of course are backward and unfair laws. To better illustrate that, our publication will focus, in a somewhat detailed manner, the situation of women in Islam, in the Islamic law, and in the *Fiqh*. This publication will uncover the jurisprudential paradoxes that were added, in the late periods, to the Islamic *Sharia*, and resulted in its detachment from the tolerance and the simplicity of religion. Also, it will present the solution that we call for and which stems from the Quran.

The Status of Women in Islam

There is no doubt that Islam, in its origins, has honored women and gave them rights equal to those of men. However, in its branches and laws, Islam discriminated between women and men, and put the men in a higher degree than women. Therefore, we find, in the verses of the *Usool* (assets), equality in rights whenever women were equal to men in duties. God Almighty says: “And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]”, while we find in the verses of the *Furoo'* (branches), that men are guardians over women. Almighty God says: “Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth.”

These verses show that there are two levels of discourse in the Quran; the first includes praising, equality, and freedom because it distinguishes between women and men based on guardianship – guardianship of men over women.

We find the first discourse in the Meccan verses, which were revealed to our Prophet, peace be upon him, during the first revelations of the Quran in Mecca over a period of thirteen years. But the society of Mecca, due to its backwardness and primitiveness, and because it had recently left the wild, could not implement these noble and humane Meccan verses, and so it did not respond to the invitation. Thus the Prophet, peace be upon him, was ordered [by God] to migrate to Madina where the Quran of Madina was revealed. This Quran took into account people's state of weakness, and changed the content of the Meccan Quran. So the Muslim society in Madina was established based on laws derived from verses that do not reach the level of laws that could be derived from Meccan verses. This was because any law should take into account the ability and the need of the society which it set out to organize. Therefore, the verses of Madina were revealed according to the social level of the seventh century in order to take it to the level of society that merits the Meccan verses. Hence, the Islamic *Sharia* came to regulate life in the society of Madina and all similar Muslim societies. The personal status *Sharia* came to regulate the status of women in those societies.

The Status of Women in Islamic Law

The first issue we have to acknowledge when we discuss the status of women in Islamic *Sharia* is that it does not treat women and men equally. This was made clear though the fact that *Sharia* was based on a verse that states that any man, no matter his intellectual level and cultural background, is a guardian over any woman, no matter her cultural and moral level. The verse in question says: “Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth.” “Men are in charge of women”, means guardians over them [to help and to protect]. “by [right of] what Allah has given one over the other” means that God preferred men over women. Most prominently, God preferred men over women with physical strength, which enabled men to overcome the difficult life at the time. In the society of the seventh century, physical strength was the most demanded virtue. “and what they spend [for maintenance] from their wealth” because men were working outdoors, earning money and spending it on women, while women were housebound and only went out when it was necessary, and necessity here means not having a man to provide for her. In this case only, could she go out to earn money for herself and for the children she takes care of.

All others legislations came from this verse (the guardianship verse) therefore, the status of women was lower than the status of men in these legislations. In inheritance, for example, we find that one man inherits the portion inherited by two women, because God says: “for the male, what is equal to the share of two females”. This is because the man, as I mentioned earlier, is responsible for spending on the women of his house, whereas the woman is not responsible, not even for spending on herself. In testimony as well, the testimony of one man equals the testimony of two women. This is based on the verse that says: “And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her”. The reason why one man’s testimony equals the testimony of two women is that women had a weak personality and a weak memory due to her lack of experience. Women were, as I mentioned before, housebound, which is why they did not have the opportunity to strengthen their characters and thought. Therefore, the verse states: “so that if one of the women errs, then the other can remind

her”. This is the wisdom behind the rule that says that the woman's testimony equals half of that of the man.

In *Sharia*, the man also has the right to divorce. The man can divorce his wife at any moment he wants under no conditions or restrictions. While the woman does not have the same right to divorce her husband. She must live with him no matter what he is like, even if she was reluctant to do so, as long as he is performing all of his duties towards her, [which include providing] housing, food, and clothing.

There is one last right which *Sharia* grants to men over women, which is the right to discipline. This means that the man has the right to beat his disobedient wife, who does not follow the orders of her husband. God says: “But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them”. This verse states that the woman must obey her husband no matter what, as long as he performs his duties, some of which I have mentioned above.

This was very wise in relation to the seventh century, because it resolved women's issues in that society. Islam made laws for women according to their needs, their abilities, and the abilities of their societies. But is this status the final target that religion wants for women? Is this the last word Islam has for women? Or is there another status, in religion, upon which a new ruling could be made, and which solves the problems of the contemporary woman according to her needs, her abilities, and the abilities of her societies?

Muslim jurists made a big mistake when they considered that *Sharia* is the Islam's last word for women. Therefore, they were caught in a severe contradiction when they could not reconcile between *Sharia* and the evolution of everyday life and the developing woman especially. We see them [jurists] talking about *Sharia*, but living outside of it. And every time women achieve progress and development, they remind them that their rights in *Sharia* are adequate to their needs, and that God gave them all the rights they aspire to. As they [jurists] began *Ijtihad* [independent judgement] to devise provisions to keep pace with the evolution of everyday life, and as they stretched the use of their legal opinion, they went back on women's rights, even those given by *Sharia*, even though *Sharia* did not grant women all the rights that the religion wanted for them. The jurists debased women's rights, thusly detaching themselves from the

spirit of the religion. That resulted in a *Fiqh* that is rigid and insulting to women, even during that backwards era, let alone the modern era.

The Status of Women in Islamic *Fiqh*

It should be clear that *Fiqh* is not the same as *Sharia*. *Fiqh* is an expression of opinion, and started as an *Ijtihad* for which there is no explicit text in the Quran or the *Sunnah*. Then, *Fiqh* fell apart until it became, in its last days, an *Ijtihad* of even that for which there is a text in the Quran, an *Ijtihad* that even contradicts the Quranic text. (See my book *The Detachment of Fiqh from Religion*)

In order to demonstrate what we have said of the failure of *Fiqh* and its insult to women, we will bring up some jurists' views on the status of women in the Personal Status Law. Let us start with the jurists' opinion regarding the marital relationship itself. It is a useless and extremely backward opinion. According to *The Fiqh of the Four Sunni Doctrines Part IV*, marriage is "a contract simply for taking pleasure in a woman's body". This is a faulty and limited understanding of the nature of the noble relationship [marriage], that which God mentioned in the Quran in his saying: "And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought."

From this limited understanding of that relationship [marriage] came jurists' laws that are rigid, insulting to women's dignity, and far from the tolerance of the religion. These laws came to regulate this relationship. For example, all doctrines agreed that if a woman got sick, her husband doesn't have to arrange for her treatment. In fact, some jurists believe that her illness forfeits her right to be provided for by her husband since her husband married her so she could please him. So seeing as her illness caused her to be unable to please him, she loses her right to treatment. According to the *The Fiqh of the Four Sunni Doctrines Part IV*: "In fact, some schools of thought believe that *Nafakah* [the husband spending on his wife] is not obligatory except when sexual pleasure is being granted. A sick wife is not suitable to please sexually and therefore does not deserve her expense." The same source also states the following: "*Hanafi* jurists agreed to what we have mentioned, according to provisions, because the wife's rights requires her husband to spend money on everyday matters of life, which is a life of health not illness, and therefore, he is not required to pay for medical care anyways."

As for man's *Nafakah* to his wife, the jurists say: "Since the husband is not obliged to provide medication or physician's payment to his wife, then he also isn't required to pay for her cigarettes, coffee, tea, and such things, even if she suffered from withdrawal [of these substances]. Opinion varied regarding payment for the midwife. Some considered the husband responsible to pay for the midwife, some said the wife should pay and not the husband, and some said the one who summons the midwife pays her." The *Shafiee* say: "A husband in difficulty [financially] is obliged to provide food for his wife every dawn of every day." "He must provide her with water needed for drinking, cleaning, and washing. But if water is needed for washing from menstruation or ejaculation, then he is not obliged to provide." "As for makeup and accessories, the husband is not obliged to provide, as it is the wife's duty to be groomed for him so she provides her own makeup. He is also not obliged to provide his wife with medication, physician's fees, cuppers, and such things."

As stated by the *Hanbalis* in this regard: "The husband is not obliged to provide for toiletries like henna and dye, or buy accessories and such. He is not obliged to provide his wife with medicine or doctor's fees. But if he wanted to see her in makeup, he should provide it for her." Other examples that demonstrate their limited understanding include *Maaliki's* opinion that a husband is not obliged to make his wife feel full, if she has a big appetite! Some jurists say that the husband does not have to bury his wife after she dies! These are a few examples among many others that show very clearly the backward views of jurists which degrade women and debase this sacred relationship [marriage].

From these examples, it appears that the views of jurists regarding woman are very backward and far away from the spirit of our modern age. Furthermore, they are contrary to the tolerance of *Sharia*. Thus, we must strongly reject and fight them, and seek to exchange them with laws from religion itself, laws which preserve our dignity and our freedom. When we reject these views which drive *Fiqh* away from the religion, it must be made clear that we are with the religion, for the *Fiqh* detached itself from the religion as we stated in the examples we mentioned above, and because *Sharia* is not the religion's final word regarding women's rights.

Developing the Law of Personal Status is the Solution

The only solution, without which there is no solution to the issue of women's rights, and in which women find all their honor and dignity, lies in the development of Islamic law. Here, development means that we move text by text through the Quran, which was put into effect in the seventh century, because it was appropriate for that society. It is organized in accordance with that era's capability and need. We should move to a text in the Quran on which no legislation has been based because it was bigger than the need and capability of society, and which is in accordance with the needs and capability of 20th century society.

The reason for the demand for developing Islamic law is that this society – that of the 20th century – has developed greatly in a period of 14 centuries. Since the descent of the Quran until today, all of society has developed greatly, and especially regarding the status of women. The woman who was imprisoned in the house, did not go out unless necessary, and who had little experience in the world around her, and who depended on men financially and for protection, has become today equal to men in terms of performing her duties. She has come out [of the house] and participates in the activities of society. She has become a judge, an engineer, a doctor, and a minister. Her realization of the life around her has become as the realization of men, in other words intense. Women now undertake the same duties to society that men do. Thus, it is an injustice rejected by God to apply to women the same laws that applied in the 7th century. To do so is to say that after the passage of 14 centuries, no development has taken place. This is rejected by religion and refused by reality.

[The idea of] the development of legislation was initiated by Mahmoud Muhammad Taha, and is what we have been constantly calling for as Republicans. The development of the status of women is our main concern. We call on all of society, women in particular, to demand resorting to the origins of the Quran, from the Meccan verses which were abrogated by Madina verses. The Meccan verses are those that God accepts for us now and he accepts only them. His acceptance is concerned only with dignifying people and honoring and liberating them. In these verses we find all dignity, pride, and freedom for men and women alike. However, the society of the seventh century could not do this. Therefore, they annulled society's rights. The purpose of this annulment was to delay working in accordance [with these rights] until the arrival of a society that needed them and can bear them, and so applies them.

In our estimation, this society has now arrived, and it is for the sake of this society that we call for that for which we call. The reason for the call to development then, is that the situation of women has changed from a level

of incapacity which she used to experience to a level in which she is mature. Hence, the law must be based on the principle of self-responsibility; women are responsible before the law as is the man. In our religion the woman is fully responsible before God. Her father cannot carry this responsibility for her, nor can her brother or her husband. But in *Sharia*, her responsibility is incomplete because man is her guardian.

Therefore, we demand the development of law from the level of guardianship to the level of responsibility, and this law should say that women are responsible before society just as man. The verse says: “And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]”, which means whenever women develop in society and begin undertaking many duties, society should give rights equal to her duties. “But the men have a degree over them [in responsibility and authority]” should not be understood as every man having a degree above a woman. This understanding is rejected by reason and it denies reality, because many women are better than many men. This verse must not be understood as discrimination before the law, but means that at the top of the pyramid of human evolution lies a perfect man followed by his wife, then followed by a number of women and men who vary in their degree of closeness to God.

All other laws must be built from this verse, so women at this level are free to choose their husband and have the right to divorce their husband, as long as the husband has this right, when she considers it impossible to have a married life with him.

With this law [we demand] that husband and wife belong completely to each other without polygamy. God says “...then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one.” And in another verse, God says: “And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so].” Hence, it is clarified for us that the aim of God is one woman for one man, because He has decided that man cannot impose justice and equality between his wives even if he desires to do so.

In addition, tangible equality, which, among other reasons, permitted polygamy in the past, has changed into moral equality. Equality in the seventh century was explained by the Prophet (peace be upon him) as material equality – in clothing, housing, food, and so on. The infallible Prophet said, “O Allah, this is what I have done with regard to that over

which I have control, so do not blame me for that over which You have control and I do not.” This material equality has, in our present society, changed into moral equality, because women in this society have become capable of spending on themselves and therefore they now demand equality in a man’s heart, and this is what man cannot do or give to two women at a time. “...do not blame me for that over which You have control and I do not.” A husband should belong completely to his wife, without her sharing him with another woman.

In this law, woman is completely equal to her husband, and therefore man does not pay a dowry for her, because a dowry represents the era of debasing and dishonoring women, when man was her guardian. He represents man spending money on his wife, and spending money is one of the reasons for guardianship, and a dowry is even more than this. This represents a price for the purchase of a woman, when she married through being a concubine or through captivity or purchase. Thus, the woman, in this noble law, does not have a material price that can be paid for her, because she is priceless. She is equal to man, and her dowry is her man. As I pointed out earlier, it has been said that her husband belongs to her completely and she to him.

If we abolish the material dowry, we can enter more into religion and we will have adopted the morals of the Noble Prophet because he desired a small dowry. In some of his *Sunnah*, he made the dowry a moral dowry. He celebrated the marriages of some of his companions with verses from the Quran, and he married Al-Sayyida Safiya without a dowry, [instead] making her dowry her emancipation from slavery. This shows us that freedom can be a dowry for women, and it is in fact the most valuable dowry for her. This is what we call for – freedom and dignity as the only dowry for women.

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Introduction to the Islamic Perspective on Gender

Glimpses of Arab-Islamic History

Islamic Reform and Women

Marriage: Between Traditional *Fiqh* and CEDAW

Appendix:

Women's Rights in Religion, *Sharia*, and *Fiqh*

References and Sources of *Islam and Women's Rights*

Haytham Manna

Dr. Haytham Manna was born in the city of Dara'a in southern Syria. He studied General Medicine at Damascus University in 1976 and at the University of Pierre and Marie Curie in France. He received a Diploma in Psychosomatic Treatment from the University of Paris 13, and a Diploma in Sleeping and Waking Disorders from the University of Montpellier in 1989. A year later, he taught a Sleeping Disorders course at the University of Paris North. He studied Social Sciences and was awarded a PhD in Anthropology from the Higher Institute of Social Sciences in Paris in 1983. He is a cofounder of the French-language revue *SOU'AL* (1980), editor in chief of the revue *MOUKARABAT* [Approaches], and editor of the Short Universal Encyclopedia of Human Rights (Volume I: *Al-Ahali* (2000), Volume II: *Al-Ahali and Eurabe* (2002), Volume III (2011)).

He held several militant stances on an Arab and international level. In 2004, he was elected President of the International Bureau of Humanitarian and Charitable Associations and was the Spokesperson of the Arab Commission for Human Rights until September 2011. He is Coordinator of the International Coalition against War Criminals and President of the Scandinavian Institute for Human Rights.

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Dr. Manna contributed to several collaborative writings about women and human rights in the Arab world in addition to the *Arab Human Development Report*. He is the author of books in the French language, translated books, and has written more than 4,000 articles and lectures in the Arabic, French, and English languages.

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