MARRIAGE AS A TECHNOLOGY OF THE SELF

MARRIAGE AS A TECHNOLOGY OF THE SELF: SEX, GENDER AND JURISTIC

INVERSION IN THE SOTERIOLOGY OF IMĀMĪ LAW


By TAYMAZ TABRIZI, B.A., M.A.



A Thesis Submitted to the School of Graduate Studies in Partial Fulfillment of the

Requirements for the Degree Doctor of Philosophy

McMaster University DOCTOR OF PHILOSOPHY (2016) Hamilton, Ontario

(Religious Studies)

TITLE: Marriage as a Technology of the Self: Sex, Gender and Juristic Inversion in the

Soteriology of Imāmī Law

AUTHOR: Taymaz Tabrizi, B.A. (McGill University), M.A. (Concordia University)

SUPERVISOR: Professor Liyakat Takim

NUMBERS OF PAGES: vii + 257

## ABSTRACT

This dissertation explores marriage in Muslim Imāmī juristic law as an embodiment of a set of practices that are aimed at cultivating the pious and virtuous self. As a ritual practice for mainstream Imāmī jurists, marriage (and its corollary activities, e.g. sex) was a mode of pietistic self-fashioning and hence a technology of the self. When faced with the strong possibility or inevitability of marital breakdown, and the sexual sins that may have come about as a result of this breakdown, Imāmī jurists opted for creating a space for women's prerogative to divorce in which the marriage could end whilst still upholding Islam as a program for the circumvention of sin and the production of *īmān*. Divorce, in this sense, could be thought of as a safety mechanism and extension of marriage's program for the nurturing of a pietistic psychology in men and women. The textual and gendered discourse of juristic law was therefore aimed at creating a legal program for individuals so as to maintain the normative Muslim's ontological bond with God through a series of regulations, disciplines, bodily practices and juristically permitted gendered power inversions that promoted soteriological success.

This study argues that the primary concern of Imāmī jurists was not to maintain a gendered hierarchy as the current dominant scholarship holds, but to prevent sin, especially zinā, the corruption of the *qalb* (metaphysical heart) and ultimately avoid damnation in the Hereafter. For Imāmī jurists, marriage was not just a procedural practice of rights and duties, but a mode of self-development and a platform through which an eschatological battle against sexual sin and the Devil took place in. When patriarchy, or more specifically, asymmetrical power relations between (actual/potential) wives and husbands (or guardians) conflicted with the soteriological aims of juristic discourse, these power relations were inverted.

The study concludes that maintaining gender hierarchy was not integral to the cosmology of juristic practice (even in its premodern discourse); it was maintaining the normative believer's ontological bond with God and saving him/her, as well as the believing community, from damnation. Theological concerns for salvation - and the cultivation of the pious self that made salvation possible – was what animated Imāmī juristic discourse and not patriarchy regardless of its presence in the source-texts (Qur'an, ḥadīth) or social custom (ʿurf).

This study undertakes this task by observing six key areas in the Imāmī tradition where notions of salvation and spiritual ontology in marriage/divorce figure the most prominently: juristic preliminaries on marriage and zinā, interfaith marriage, prepubescent marriage, temporary marriage with zānīyahs, *nushūz* and *khulʿ* divorce.

ACKNOWLEDGEMENTS

*"Keep Thy Mind in Hell and Despair Not"*

Saint Silouan the Athonite

*"Acquire the Spirit of Inner Peace and Thousands Around You Will Find Salvation"*

Saint Seraphim of Saarov

TABLE OF CONTENTS

INTRODUCTION

*Blessed are the pure in heart, for they will see God.*
 – Matthew 5:8

*When a believer sins a black dot appears on his heart. If he repents, removes himself from the sin and seeks forgiveness, his heart is polished from the black dot, but if he increases his sins, then the dot increases in size. And this is the corrosion that God has mentioned in his Book: "No, but their hearts are corroded by all [the evil] they earned."*
– The Prophet Muhammad

## 0.1: GENERAL INTRODUCTION

It was late at night in the city of Ḥillah when a boy named Ḥasan woke up to find himself wet

from his first nightly emission. Ḥasan had been taught that nightly emissions meant that he was

no longer a boy, but a man. He had also been taught that these emissions were the beginnings

of his sexual virility and the ability to bear children. Ḥasan was not particularly happy about

what had just transpired. He knew that with his newly found sexual desires, he would be easy

prey to Satan. Satan could now unleash his worst weapon in his arsenal and lead him into

temptation and sin. This is what his family had told him after all. His maternal uncle was

famous cleric and jurist. His own father was a scholar in his own right.

In the pitch black darkness of his home, he crept into his parent's room and woke them

up from their deep slumber. His father, incredulous at being woken up so late in the middle of

the night, asked his son what the meaning of the disturbance was. Ḥasan explained that he had

just gotten his first nightly emission. Slightly amused, his father replied, "good for you! - now

please go back to bed and we will talk about this tomorrow." Ḥasan, however, refused to go

away. He explained the dangers of his current state and what it could do to his soul if he didn't guard himself. He insisted that he had to marry that same night and protect himself from sin.

Ḥasan knew of a neighbor's daughter who was eligible for marriage. They had been family friends for quite some time and he figured that he would marry her at some point in the future, but he didn't realize how soon that would be. He reminded his father about the neighbor's daughter and that nothing in Islam forbade them to marry that same night. Baffled at his son's eccentric request, he answered that they would go to the neighbor's home the next day and ask for the daughter's hand in marriage. Ḥasan, however, would have none of it. He begged that as a man, he could not go to bed because Satan, as the Prophet Muhammad had taught, slept in the beds of unmarried men. Now that he was a man with sexual urges, he was prey to the Devil.

Amazed at his son's zeal against sin and Satan, he and his wife, along with Ḥasan, went to the neighbor's house and knocked on the door in the dead middle of the night. When the neighbor – half asleep - opened the door, Ḥasan – with the reality of his demands finally sinking in -  immediately hid behind his father out of embarrassment. Ḥasan's father Yusūf conveyed his son's dilemma to the neighbor.

"So," Yusūf concluded, "he won't sleep until he gets married. I wanted to see if Ḥasan could have your daughter's hand in marriage…*tonight*" The neighbor had known Yūsuf, a well-respected Imāmī scholar, for quite some time and trusted his family as they were pious and morally minded people. Also amused and impressed at Ḥasan's zeal, the neighbor accepted the proposal and the young couple married that same night.

By taking his new bride home that night and consummating the marriage, Ḥasan had won an important battle against the Devil and sin. Ḥasan b. Yūsuf b. Muṭṭahar al-Ḥillī (d.

726/1325), the young boy of this story, was to become ʿAllāmah al-Ḥillī, one of the founding

fathers of Imāmism today.

Al-Ḥillī's odd insistence on marriage is reflective of a fundamental concern for

salvation in the Islamic tradition. In its various sects, conflicts and disagreements, Islam as a

discursive tradition holds that God created humanity to test them on this earth. The earth, as

one Prophetic tradition holds, is the "cultivating grounds for the Hereafter (*mazraʿat al-

ākhirah*)." The Qurʾan, in its own terms, states that

> Surely, we created man out of a drop of mingled sperm so that we might test
> him and we therefore made him a being endowed with hearing and seeing.
> Surely, we have shown him the way, be he grateful or ungrateful.[1]

The test is a test of salvation. All human activity is soteriologically relevant from the moment a

person wakes up in the morning until he/she goes to sleep at night. As long as a Muslim is sane

and is of a conscious and discerning mind, he/she will be accountable before God. What is

being tested is the *qalb*, that is, the metaphysical heart.[2] For most of the Islamic tradition, and

normative to the Imāmī tradition, the quintessential goal of God's special revelation to

humankind is not only to warn people about the Day of Judgment, but it is to purify the

metaphysical heart through the cultivation of piety and the virtuous self. The Qurʾanic

narrative is quite explicit on the subject when it says "*...the only one who will be saved is the

one who comes to God with a pure qalb.*"[3] The Islamic discursive tradition holds that divine

tests are not only there to vet people's faith, but they are also a means for spiritual struggle,

growth and self-transformation.

---

[1] Q76:2-3.

[2] For most of the Imāmī Islamic tradition, the *qalb* in its essence is metaphysical in nature. See chapter 1 on a discussion of the subject.

[3] Q26:89

Imāmīs hold that there is no greater test than avoiding sin. There is no greater harm (*ḍarar*) possible than falling into sin. Sin is expressed in various terms in Arabic including *dhanb* (lit. 'a tail that follows a person') and *khaṭā* (lit. 'to miss the mark'). A sin has a lasting polluting effect on the human heart and follows a person "like a tail" unless there is sincere repentance. As the purpose of human creation is to serve God and purify the heart, to sin is to "miss the mark," namely to miss out on the purpose of existence. Sin is a corrupter and pollutant of the heart and is essential to the process of the metaphysical heart's (*qalb*) death and thereby the loss of divine grace (*luṭf, raḥmah*). It is an immoral act for it is a transgression against the self, the divine *and* the community for sin is not isolated to the individual soul, but is inherited and spread collectively through contagion. At its core, mainstream Imāmī discourse holds that sin is an ontological state, a disposition of the mind and soul and a state of heedlessness and ungratefulness towards God. As such, sin is a disease that infects one's whole being. On a Sufi description of sin, Sherman A. Jackson writes,

> Piety, however, and one's ability to honor one's debt to God are not the only interests affected by sin and disobedience. Rather, the entire constellation of one's powers of perception and realization are affected as well. As Ibn ʿAṭāʾ Allāh describes it, disobedience brings down darkness upon a person, blackening their heart and lowering over them a veil that stands between them and God.[4]

The Egyptian Sufi Ibn ʿAṭā Allāh al-Sakandarī's (d. 709/1309) understanding of sin was by no means unique, but a view that was shared by most of the Islamic tradition, including Imāmī Shīʿīsm. Like Ibn ʿAṭā Allāh and Pauline Christianity, mainstream Imāmī Shīʿīsm sees sin as transforming (for the worst) one's power of perception and grasp of divine truths and morality. It veils the Muslim subject from God and is a necessary condition for the heart's death. From one heart, sin spreads to the rest of the community and thereby affecting the world. As Satan is

---

[4] Sherman A. Jackson, *Sufism for non-Sufis? Ibn ʿAṭāʾ Allāh al-Sakandarī's Tāj al-ʿArūs* (New York: Oxford University Press, 2012), 31.

the primary foe and conscious antagonist of human salvation, sin is the tool the Devil uses to seduce people and lead them to damnation by veiling them from God and shutting down their perceptive faculties of the divine. This understanding of sin is not dissimilar to Eastern Orthodox Christian ontological effect of sin. The Russian Archimandrite Sophrony (Sakharov) (d. 1993) for example, summarizes the ontology and psychology of sin as follows:

> Sin is primarily a metaphysical phenomenon whose roots lie in the mystic depths of man's spiritual nature. The *essence* [emphasis mine] of sin consists not in the infringement of ethical standards but in a falling away from the eternal Divine life for which man was created and to which, by his nature, he is called. Sin is committed first of all in the secret depths of the human spirit but its consequences involve the individual as a whole. A sin will reflect on a man's psychological and physical condition, on his outward appearance, on his personal destiny. Sin will, inevitably, pass beyond the boundaries of the sinner's individual life, to burden all humanity and thus affect the fate of the whole world. The sin of our forefather Adam was not the only sin of cosmic significance. Every sin, manifest or secret, committed by each one of us affects the rest of the universe. The earthly-minded man when he commits a sin is not conscious of its effect on himself as is the spiritual man. The carnal man does not remark any change in himself after committing a sin because he is always in a state of spiritual death and has never known the eternal life of the spirit. The spiritual man, on the contrary, does see a change in himself every time his will inclines to sin - he senses a lessening of grace.[5]

The Islamic discursive tradition lists a vast array of sins. These sins range from eating pork, drinking alcohol, backbiting, slandering, murder, theft, and illicit sex to only name a few. According to Imāmī source texts, the most common, most seductive and of the most destructive of these sins is illicit sex. It is common and seductive because the human sexual drive is the most powerful of the drives. It is destructive because it is a deadly sin (*kabīrah*) that may result in the death of the metaphysical heart. Along with anger (*ghaḍab*), illicit sex is the Devil's greatest weapon in deviating humankind from God's Straight Path (*ṣirāt al-mustaqīm*). Illicit sex and sexual activity takes many shapes and forms, including masturbation, incest, rape, bestiality, or even lustfully gazing at a person whom one is not

---

[5] Archimandrite Sophrony (Sakharov), *Saint Silouan the Athonite*, trans. Rosemary Edmonds (New York: St Vladimir's Seminary Press, 1991), 31-32.

allowed to have sexual relations with. Sins related to sex also happen within marriage, they include sex during menses and sexual disobedience to a spouse (*nushūz*), all of which play fundamental roles in the eschatological battle of sin and virtue.

The most feared of these sins is zinā. Zinā is sexual intercourse with someone outside the confines of marriage or concubinage. Zinā, according to Imāmī tradition, is one of Satan's primary means for seducing, corrupting and 'darkening' the *qalb* of humans. Sexual sins like incest and bestiality are 'weightier' sins than zinā, but what makes zinā the most feared of sexual sins is its high likelihood of occurrence and the ripple effect it may have on the believing community. Although masturbation may be more likely than zinā, its ripple effects are less as children are not born out of it. Most humans are also assumed to be more likely to commit zinā than to commit bestiality. Bestiality, like masturbation, does not produce illegitimate children either.

Zinā's most feared ripple effect is the production of illegitimate children. Illegitimate children are believed to harm communal harmony. The believing community (*ummah*) is the cradle in which the metaphysical heart grows in. Communal chaos and disharmony significantly complicates the growth of the spiritual heart by destabilizing the harmony of the social environment that is needed for it to grow in.

Illegitimate children are a problem as they are assumed to be of little faith (*īmān*) in adulthood and have greater tendencies to rebel against God. Particular to the Imāmī tradition, people born out of zinā are more likely to harbor enmity against the Prophet Muhammad and the Imāms of his household (Ahl al-Bayt). A *nāṣibī* (enemy of the Prophet and his Ahl al-Bayt, or someone who knowingly rejects Imāmate) is usually believed to be the product of zinā. For the Imāmī tradition, the archetype of a *nāṣībī* (and someone believed to be born out of zinā) is

Yazīd b. Muʿāwīyah (d. 64/683), the Caliph responsible for the murder of al-Ḥusayn b. ʿAlī (d. 61/680), the third Imām of the Shīʿī tradition. Sex is therefore soteriologically operative and central to the formation of the pious self - and as such, the key assumption that permeates marriage and divorce law in the Imāmī juristic tradition.

The normative solution to this soteriological problem is marriage. As a young boy, ʿAllāmah al-Ḥillī was faced with the possibility of falling into sexual sin and having Satan 'sleep' in his bed. But he would have none of it. The fear of sexual sin and demonic presence, as the Imāmī tradition taught him, meant that it was divinely incumbent on him to marry even if it meant subjecting himself to embarrassment and ridicule. The fear of God and the possibility of having his heart corrupted was too serious of a problem. Discomfort in this world was temporary, but salvation or damnation in the Hereafter was a question of eternity.

The teleology of marriage in the Sharīʿah (permanent or temporary), as understood by the Imāmī legal tradition, is to prevent illicit sex, illicit lustful/sexual activity and foster a healthy relationship with God. Directly or indirectly, the majority, if not all of marital law, including the practice of wife-beating, are about avoiding sexual sin, cultivating *īmān* and therefore promoting human salvation. The ultimate concern for salvation is what animates marriage and divorce law either explicitly or as an implicit and 'dormant' concern that may wake up the moment that the law is thought to counteract this telos. The single most important soteriological and moral tool in the Imāmī tradition is the doctrine of Commanding the Good and Forbidding Evil. The doctrine is meant to entice believers to promote piety and the morally good in their communities as well as forbidding evil, namely sin - or a situation or environment that is conducive to sin -  from coming about or reoccurring. If it is not an outright choice

between good and evil, it insists that believers should choose the greater of two goods and the lesser of two evils.

Commanding the Good and Forbidding Evil is a theological doctrine as it is centrally a question of faith in the Imāmī tradition. Yet Commanding the Good and Forbidding Evil also manifests itself legally. In the law, it branches itself out in multiple categories. The first category is named after the theological docrtine itself, namely Commanding the Good and Forbidding Evil. This legal principle is meant to produce rulings that are favorable to individual and communal salvation. It is also meant to check and invert juristic conclusions that are unfavorable to salvation. Yet the legal principle of Commanding the Good and Forbidding Evil is to be used at the discretion of the jurist and is usually binding to the jurist's followers only. Some exceptions are possible and the ruling may at times become binding on the whole community.

The second category is ʿadam al-mafsadah (and its sister principle maṣlaḥah), that is, "no harm/corruption." ʿAdam al-mafsadah functions the same way as the legal principle of Commanding the Good and Forbidding Evil except that it is a universal default mechanism. The jurist may not observe discretion in the matter. If there is *possibility* of harm, then by default the jurist is obligated to invert his legal conclusion or else his ruling will be invalid and he will sinful before God. The third category is the principle of lā ḍarar wa lā ḍirār (no harm and no reciprocal harm). It is similar to the second category, except that ʿadam al-mafsadah is meant to address wider social ills whereas the latter is meant to address personal, more specific ills such as unfair and detrimental contracts. These are the most widespread definitions of the terms, but these definitions are often used interchangeably which makes the above distinctions rather difficult to make. As far as marital life is concerned, all of the principles, irrespective of

their scope, are meant to be checks on juridical conclusions for the purpose of ensuring the salvific purpose of marriage and its function as a mode for the fashioning of the pious self. Inversion of soteriologically detrimental verdicts is the primary function of these principles.

Here I differentiate inversion from subversion as a process of negotiation rather than negation, a term which I borrow from Homi Bhabha's discussion of the subaltern.[6] In the context of Imāmī law, I am referring to a kind of negotiation with the tradition and its source-texts that does not seek to overturn it or negate its set of normative assumptions, but to establish a process of mediation and arbitration that seeks either to compromise some of its conclusions in specific cases or change their direction for a more salvifically favorable outcome.

In marriage and divorce law, the most significant manifestation of this soteriological inversion is the inversion of patriarchy. Asymmetrical power relations between husband and wife, daughter and male guardian, are quite common within the assumptive conclusions of Imāmī juristic law. Sometimes, however, jurists conclude that these power relations, although taken for granted at first, may create subversive and sinful dispositions - particularly in women - against God's moral order and the institutive teleology of marriage. As marriage is supposed to be a preventer of sin, the possibility of it being a catalyst for sin is an especially troubling dilemma and moral crisis. A particular ruling may either create a context for marital disharmony for both sides (and hence causing marital breakdown and opening doorways to illicit sexual activity), or create a situation where a husband, and especially a wife, would be more inclined to commit a sexual sin and thereby corrupt the subject's heart and "pollute" the community's pool of salvific health.

---

[6] Homi Bhabha, *Location of Culture* (New York: Routledge, 1994), 37-38.

A plain discourse of rights does not seem to factor in driving this kind of inversion, at least from what is apparent in the writings of the jurists that I observe (the only exceptions are some modern, late twentieth and twenty-first century jurists). The discursive inversion, when the context is relevant, engages with alleviating female suffering not as a response to a depreciation of rights but a concern for salvation and the transformation of the pious self whose link to suffering is inextricable.[7] Suffering can be both redemptive and non-redemptive. In marital relations, suffering falls under the rubric of the latter and may therefore be counterproductive to the maintenance of piety. As such, the discourse suggests that the aim of juristic inversion is, in part, to reorient some marriage and divorce laws so that marriage itself, or Islam as a discourse and practice for piety and a platform for the growth and preservation of *īmān* (in case when marriage inevitably breaks down) does not become self-defeating in its commitment to salvation and the creation of pious subjects by insisting on an unnecessary mode of power that exacerbates suffering and the production of sin. If power relations between men and women become less accentuated, that is only a by-product of a larger and more important concern than simply giving women rights.

Yet the importance of this process is by no means insignificant for studies in Islamic law and gender studies. What my results in some key chapters suggest is that patriarchy as an asymmetrical power relation between husband and wife (or daughter and male guardian) is not an *essential* and *necessary* component of the law and the juristic tradition. As long as Islam or Islamic law is not rendered incoherent and its normative principles such as the unity of God, or the prohibition of zinā - among other things -  are not challenged, almost any asymmetrical

---

[7] For a critique of the discursive homogenization of women's interests and suffering in Western feminist constructions of 'Third World Women,' see Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses" in *On Humanism and the University I* 12, no. 3 (Spring –Autumn 1984): 333-358.

power relation between men and women can be inverted. For this reason, patriarchy is not part of an 'idealized cosmology' that Imāmī jurists have to abide by. Patriarchy is assumed to be a useful socio-legal tool that may benefit salvation, but it is not, in the vast majority of cases, indispensable from an Imāmī juristic perspective. As such, when patriarchy conflicts with the Sharīʿah's teleology of salvation and the production of the virtuous subject, it is inverted by the same jurists who previously upheld the patriarchal model in the first place. What is essential to the cosmology of juristic law is salvation, not patriarchy.

## 0.2: WHY THE SUBJECT IS IMPORTANT

Writing about gender and Imāmī law, particularly when it is a concentrated study of its discursive legal tradition is not an easy task. Few volumes *solely* dedicated to this specific genre of jurisprudential literature have been published in academia. Most of the published work of this kind has to do with Sunnī and proto-Sunnī law. In the Shīʿī realm, published books have largely been ethnographic and only superficially dealt with Imāmī juristic discourse. A new kind of literature on Sunnī law also gives light to Imāmī law, but the focus on the Imāmī tradition is largely secondary and often lacks depth when it comes to its nuances. This kind of literature was first popularized by Judith Tucker and is now becoming a staple in academia.

Conversing with these groups has its advantages as well as its disadvantages. The ethnographic works on Shīʿī law only lightly deal with Imāmī juridical discourse (and usually within a national context that mostly involves Iran and sometimes Lebanon,) yet they provide insight into a particular kind of Western feminist perspective, largely that of a native

informant,[8] which mostly ignores the theological/soteriological foundations and implications of the law that they seek to reform. What is actively pursued is the superimposition of a form of secularity unto the law where its paradigmatic regulation and telos of gender relations *and the self* are disconnected from the soteriological and ontological matrix that animates its discourse. They not only ignore fundamental assumptions of salvation and the modes of virtuous and pietistic self-fashioning that Imāmī juristic discourse rests upon, but the academic productions also contribute – whether intentional or not - to the hegemonic project of what Wendy S. Hesford calls "truth telling practices," that is, practices (in this case, publications on women's rights, patriarchy and Islamic law) that generate support for an "increasingly panoptic culture of U.S internationalism and its regulation of human rights subjects."[9] Since my work significantly deals with patriarchy and Islamic law, I am aware that my own study may possibly – and regrettably - contribute to this project as well even though I do not intend it.

Most studies published on Islamic law, Muslim juristic literature and gender lack serious discussions on the theological context that gives birth to and sustains the assumptions of the law in its salvific ontology of the Muslim subject. Part of this is due to the disconnect between the reading of the texts and the oral tradition which the works are taught and produced in. Another reason is the lack of engagement with legal theory (*uṣūl al-fiqh*) and the moral maxims of the law (*al-qawāʿid al-fiqhīyah*) that frame the discourse of *fiqh*. Although not explicit in all contexts, these considerations are prominent enough throughout the spectrum of the Islamic schools to warrant serious attention. As Wael Hallaq argues "the legal is the

---

[8] See Kirin Narayan, "How Native is a "Native Anthropologist?" in *Feminist Postcolonial Theory*, ed. Reina Lewis and Sara Mills (New York, Routledge, 2003), 285-305.
[9] Wendy S. Hesford, *Spectacular Rhetorics: Human Rights Visions, Recognitions, Feminisms* (Durham and London: Duke University Press, 2011), 19.

instrument of the moral" in the Sharīʿah.[10] The fact that Imāmī law considers marriage as not just a judicial and contractual phenomenon (in fact, unlike Sunnī law, the contract in Imāmī law is not even necessary for the validity of the marriage) but, on an important level, a matter of worship and ritual practice (*ʿibādah*), it makes the question particularly pressing. The tendency of minimizing the significance of soteriology in Islamic law and gender presents us with a number of political problems. For one, it strips it of its theological element and makes it more likely to be subsumed under the hegemony of liberal discourse[11] and – to borrow a term from Gayatri Spivak - the epistemic violence it produces. I understand epistemic violence as a process of cultural and epistemological dislocation where particular forms of Western (neo-colonial) knowing preclude or destroy organic forms of knowledge.[12] In the context of the current study, it is the theological voice of the jurists that is silenced a priori. By stripping Islamic law or more specifically Imāmī law of a phenomenological account of its set assumptions and modes of pious self-fashioning it offers to the Muslim subject, the enterprise becomes more susceptible to being reoriented towards a new sphere of power that not only denies the internal *theological* coherence of Muslim juristic law but it also inevitably, and more easily, subsumes it under the politics of secular and liberal freedom. In other words, a legal culture that is stripped of its existential *telos* - and thus rendered largely aimless - makes

---

[10] Wael Hallaq, *The Impossible State: Islamic, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), 10.

[11] For studies on the link between liberalism and power, see for example Domenico Losurdo, *Liberalism: A Counter-History* (New York: Verso, 2011); Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999). For an excellent post-colonial analysis of liberalism's relationship to Islam, see Joseph A. Massad, *Islam in Liberalism* (Chicago: University of Chicago Press, 2015). For a theological critique of liberalism, see David Bentley Hart, *Atheist Delusions: The Christian Revolution and Its Fashionable Enemies* (New Haven: Yale University Press, 2010).

[12] See Gayatri Chakravorty Spivak, "Can the subaltern speak?" in *Marxism and the Interpretation of Culture,* ed. C Nelson and L. Grossberg (Champaign: University of Illinois Press, 1998), 282-283; see also (quoted in) Jeffrey Guhin and Jonathan Wyrtzen, "The Violences of Knowledge: Edward Said, Sociology, and Post-Orientalist Reflexivity" in *Postcolonial Sociology (Political Power and Social Theory, Volume 24)* (Emerald Group Publishing Limited, 2013), 231-262.

it more malleable to being consumed by a secular project that, in the words of Saba Mahmood, ends up reshaping the religious tradition in "the form it takes, the subjectivities it endorses, and the epistemological claims it can make."[13] On a wider political scheme of things, it becomes tangled into the project of liberal post-colonial interventionism, the mission to reshape Islam along the lines of modern Protestant Christianity[14] and, increasingly, the operations of neoliberalism.[15]

This approach is symptomatic of a culture of reading legal texts that disconnects and even discredits the historical phenomenology of Islamic law and its soteriology and ontology of (sexual) sin which primarily viewed the world eschatologically in which hierarchies played a *supportive* role to its After-worldly project. This disconnect creates incoherence, a subsequent loss of meaning and a phenomenon akin to what Charles Taylor calls a "fading of

---

[13] She further argues that the "U.S. strategists have struck a common chord with self-identified secular liberal Muslim reformers who have been trying to refashion Islam along the lines of the Protestant Reformation. The convergence of U.S. imperial interests and the secular liberal Muslim agenda needs to be understood, therefore, not simply as a fortuitous coming together of political objectives and an indigenous social formation, but, given my earlier argument, from the standpoint of normative secularity and the kind of religious subjectivity it endorses." See Saba Mahmood, "Secularism, Hermeneutics, and Empire: The Politics of Islamic Reformation," *Public Culture* 18, no. 2 (2006): 326.

[14] See previous footnote.

[15] Notions of individualism, freedom and agency which much of Muslim liberal and progressive discourse rest upon are also critical components of neoliberalism. These are discursive concepts that neoliberalism is increasingly appropriating for itself to the exclusion of others. The rhetoric of neoliberalism promises political, economic and social empowerment through freedom from violence, promotion of independence and personal responsibility which are made possible through participation in capitalist markets, see Rachel C. Riedner, *Writing Neoliberal Values: Rhetorical Connectivities and Globalized Capitalism* (New York: Palgrave MacMillan, 2015). Riedner connects this rhetoric to what Saba Mahmood calls a "pre-defined teleology of emancipatory politics." Building on this rhetorical perception, Henry Giroux argues that the rhetoric is extremely subversive to social wellbeing. For one, neoliberalism celebrates self-interest over social needs as it produces an ethic of the free and possessive individual who can accrue wealth without considering social costs. This mutually works with, is fed by and feeds into a paradigm that sees the (predatory) market as a model for structuring all social relations and not just the economy, see Henry A. Giroux, *Against the Terror of Neoliberalism: Politics Beyond the Age of Greed* (New York: Routledge, 2016); also see "Henry Giroux on the Rise of Neoliberalism," Truthout, accessed October 23, 2016, http://www.truth-out.org/opinion/item/26885-henry-giroux-on-the-rise-of-neoliberalism. On neoliberalism's role in the incorporation of the language of freedom into the U.S military-industrial complex and its overall interventionist strategy, see David Harvey, *A Brief History of Neoliberalism* (New York: Oxford University Press, 2005).

moral horizons."[16]  The context of a cosmic and eschatological morality is what most Muslim jurists historically wrote in yet it is most often ignored.

My aim here is not simply to delineate juridical discussions on marriage and divorce law from an Imāmī perspective and thus repeat the same problematic approach that I am criticizing. My aim is to see the following questions answered: is marriage, as a ritual practice, simply a procedure of male domination or a technology for the pious self? To what extent do theological concerns for salvation and a believer's ontological bond with God - as well as the juristic programs for self-fashioning that make this salvation possible - shape the discursive framework of Imāmī law? How far can these salvific considerations go in limiting, expanding and possibly inverting juridical conclusions? Finally, although patriarchy is prevalent in the tradition, is it an essential and integral aspect of the law's objectives in the imagination of Muslim jurists? Did the jurists themselves, especially the pre-modern ones, see gendered hierarchy as a fundamental component for most of their discourse on marriage? What did they do when rules that promoted asymmetrical power relations lead couples, particularly women, to sin which could potentially subvert the juristic program for self-cultivation?

My observations demonstrate that concern for the salvation of the believing community through protection from sin, and particularly zinā, by means of the cultivation of the virtuous self is the animating pillar of Imāmī juristic discourse on marriage and divorce. It is not the maintenance of gendered hierarchies even when they are seemingly so (e.g. laws of *nushūz*). For the jurists, the historical progression of human relations is structured eschatologically and not *necessarily* hierarchically. My observations thus demonstrate that concern for salvation

---

[16] Charles Taylor, *The Malaise of Modernity* (Toronto: House of Anansi Press, 1991), 10.

from sin can go as far as inverting some of the most cherished of legal assumptions in male/female power relations.

Without salvation in the Hereafter, there can be no Islamic law, let alone Imāmī law. Nothing can therefore surpass the primacy of salvation in the juristic imagination of the Imāmī tradition.[17] With this perspective, my aim is to carve out a vantage point of soteriology that has been given little importance in the academic discourse of Islam and gender. I hope that my work contributes to filling a gap that synchronizes and harmonizes the field of Islamic law with theological questions of salvation, ontology, and eschatology. Given the large amount of literature that has been produced on this subject, I will deal with the main contributions to the field and their common disconnect with soteriological and ontological notions of marriage, divorce and sexual sin in Muslim juristic discourse.

<div align="center">***</div>

Susan Spectorsky's work describes the intricate details of marriage and divorce in Islamic (Sunnī) law. She writes that a woman may do things outside her domicile, but the "basis of the law" – as indicated by the Qurʾan – indicates that "her wifely role is her primary one."[18] Women are thus expected to marry and "carry on their lives as wives."[19] Marriage is a matter of *social convenience*, but a convenience that largely favors men where the "opportunities men are given to misuse their power is enormous."[20] Her study describes the intricate details of marriage and divorce in Sunnī law without reference to its soteriological underpinnings.

---

[17] Perhaps a relevant example from modern times is Ayatullah Khumaynī's theory of absolute *wilayat al-faqīh*. Khumaynī had insisted that the Islamic state could overturn any law, including obligatory prayers. Although this version of *wilayat al-faqīh* was a novelty, the assumption that allowed him to make such a statement was because in his view, the Islamic state was fundamentally tied to the salvation of the community. It was thus the primacy of salvation that could justify the inversion of prayers if prayers were to hypothetically counter the salvific aims of Islam as manifest in the Islamic Republic.

[18] Susan Spectorsky, *Women in Classical Islamic Law* (Leiden: Brill, 2010), 1.

[19] Ibid., 201.

[20] Ibid.

On a similar note, Ziba Mir-Hosseini, in her description of "traditionalist" jurists, describes their view on marriage and divorce as one where a woman is seen as having been created "to bear and rear children; in the divine plan." In this, "she has been assigned the very heavy burden of motherhood as her prime role and most important contribution to society. To fulfill this, it is both natural and logical that she stays at home and be provided for by her husband."[21] The divine plan here is to rear children and contribute to the growth of the community. What is left unanswered is what the purpose of such a community is. The divine plan is largely worldly in nature and is meant to reinforce a gendered hierarchy as lived in this world.

On women in Imāmī law, Sedigheh Vasmaghi posits that this 'restrictive' attitude of patriarchy is actually rooted in "Arab culture." The image of women we find in the law is actually the image of "Arab women in Islam's place of origin"[22] and has no bearing on Islam. Amina Wadud calls this kind of marriage, as expressed by the juristic tradition, a "marriage of subjugation" and she traces it back to two overlapping factors. On the one hand, men provide their wives with sustenance and as a result, women are expected to obey their husbands. The relationship between maintenance and obedience - a "widespread characteristic of Muslim marriage" as she terms it - is just one example of the "association of men as natural leaders deserving obedience."[23] This description, Wadud notes elsewhere, is taken as "inevitable, natural or based on divine sources."[24] Male authority is thus a "legal postulate" which is really rooted in an ancient idea, that "men are strong, they protect and provide; women are weak,

---

[21] Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton: Princeton University Press, 1999), 48.

[22] Sedigheh Vasmaghi, *Women, Jurisprudence, Islam*, trans. Ashna and Philip G. Kreyenbrock (Wiesbaden: Harrassowitz Verlag, 2014), 21.

[23] Amina Wadud, *Qur'an and Women: Rereading the Sacred Text from a Woman's Perspective* (New York, Oxford University Press, 1999), 77.

[24] Amina Wadud, *Inside the Gender Jihad: Women's Reform in Islam* (Oxford: Oneworld Publications, 2006), 153.

they obey and must be protected."[25] The husband's dominion over the wife in a gendered hierarchy, as Kecia Ali states, is the "crucial defining characteristic of Islamic marriage as regulated by formative-period jurists."[26]

On the question of male authority in marriage, Hassan Yousefi Eshkavari sources patriarchy in Islamic law, and Imāmī law in particular, to the "right of dominion (*haqq-e solteh*)" which he describes as the belief that "certain persons, groups, races or families are inherently superior to others." This right of dominion is rooted in the historical patriarchy of the region. As objects and not subjects of marital relations, he sees wives in Islamic discourse as "object[s] of male pleasure" which naturally comes out of an "androcentric mindset".[27]

On the Qurʾanic narrative of marriage, a common view among authors holds that the text is primarily advocating "harmony and mutuality within marital relationships." The Qurʾan thus establishes marital harmony and mutuality as one of its overarching goals." [28] This harmony, in the Muslim juristic perspective, is to be found in gendered hierarchy.

For Haleh Afshar, although marriage "reflects the bounty of the deity, it is not so much sacramental as contractual; it is a matter of a contract between consenting partners." The only "religious aspect" of the contract is that in some Muslim countries such as Iran, "the marriage contract, which must have the agreement of both the husband and wife, must be signed by them in the presence of a religious notary."[29] Marriage is largely a secular activity, it is a

---

[25] Ziba Mir-Hosseini, Mulki Al-Sharmani and Jana Rumminger, "Introduction," in *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, ed. Ziba Mir-Hosseini, Mulki Al-Sharmani and Jana Rumminger (London: Oneworld Publications, 2015), 1.

[26] Kecia Ali, "Money, Sex, and Power: The Contractual Nature of Marriage in Islamic Jurisprudence of the Formative Period," (PhD diss., Duke University, 2002), 383.

[27] Hassan Yousefi Eshkavari, "Rethinking Men's Authority Over Women: Qiwāma, Wilāya and their Underlying Assumptions," in *Gender and Equality in Muslim Family Law*, ed. Ziba Mir-Hosseini, Kari Vogt, Lena Larsen and Christian Moe (London and New York: I.B Tauris, 2013), 197.

[28] Aysha A. Hidayatullah, *Feminist Edges of the Qurʾan* (Oxford, Oxford University Press, 2014), 94.

[29] Haleh Afshar, *Islam and Feminisms: An Iranian Case-Study* (London: Palgrave MacMillian, 1998), 128-129.

practice only vaguely, if not at all, associated with a serious theology and a human ontology of salvation and sin. Naturally, a notion of a cultivation of the pious self that is defined by this theology is absent as well.

On Qurʾanic commentaries and its interpreters, Karen Bauer traces the inspiration of this gendered hierarchy – which is at the heart of the Medieval Islamic conception of marriage – to the Qurʾan itself.[30] The Qur'an interpreters, as she delineates, sought to frame marriage within the context "of common notions of just rulership." As such, this "idealized vision" is where the stronger man rules over the weaker woman. The husband is the ruler and shepherd, whereas the wife is the ruled party and the flock. As a consequence of disobedience, she identifies wife-beating as a "natural corollary of the husband's rulership".[31] This hierarchy of obedience, as she observes in the exegetical tradition, was the "best way to achieve a state of fellowship, companionship, and harmony between the spouses."[32]

Why obedience? Bauer concludes that obedience to her husband was the wife's sole path to salvation and thus an integral part of a jurist's exegetical and legal cosmology. Obeying one's husband merits heavenly reward, and marital hierarchy is thus subsumed "to the greater God-man hierarchy. By marrying, women agree to an extra level of hierarchical duties."[33] Harmony is thus best defined through subservience to a gendered hierarchy. Subverting this hierarchy leads to chaos and social disharmony. Salvation and social harmony is consequently found in obeying gendered hierarchies. Yet this kind of salvation is largely a worldly and secular phenomenon. If theology, salvation and the Hereafter play an active role, they largely

---

[30] Karen Bauer, *Gender Hierarchy in the Qurʾān: Medieval Interpretations, Modern Responses* (Cambridge: Cambridge University Press, 2015), 165.
[31] Ibid, 166.
[32] Ibid.
[33] Ibid., 200-201.

function to reinforce and maintain secular systems of dominion. As such, it could be said that gendered hierarchy is what determines, shapes and molds the notion of salvation in juristic discourse and not the other way around. Salvation from sin and the threat of damnation in the Hereafter, if meaningful, become subservient to the secular aims and activities of material life on earth as embodied in gendered hierarchy.

In a different tone, Ayesha S. Chaudhry offers her account of the cosmological background of marriage in Islamic law and Muslim juristic practice. She uses the term "idealized cosmology" to refer to a "vision of the universe which expresses normative religious constructions of gender; social relations, the human-divine relationship, and descriptions of the divine (theology) through the language of law and Qurʾanic exegesis." This idealized cosmology is at its core patriarchal where "God sits atop a hierarchy, followed by his creations, according to their ontological rank." In this hierarchal ranking, humans are on top of the rest of creation and "men rank above women." For Chaudhry, "men have direct, unfettered access to God, but women's relationship to God is mediated by men, who must oversee their wives' moral well-being." As a structure of leadership and gendered dominion, the question of physical discipline is "procedural *rather than ethical* [emphasis mine] when women upset this hierarchy."[34] Physical discipline, which is procedural in nature, is there to maintain men's dominion over women and is distinct from a salvific ontology of sin and the *ethical* formation of the subject.

If wives are to disobey their husbands, it is an act of arrogance (*takabbur*) as she raises herself above what God has assigned to her.[35] The crux of a gendered relationship between

---

[34] Ayesha S. Chaudhry, *Domestic Violence and the Islamic Tradition* (Oxford: Oxford University Press, 2013), 12-13.
[35] Ibid., 67.

husband and wife within the context of "pre-colonial" (as she terms it) Islamic marriage law

can be summed up in the following passage:

> All of the definitions offered for wifely *nushūz* in pre-colonial Qurʾān
> commentaries were hierarchical in nature, and they re-instantiated a
> patriarchal view of marriage. The fact that the definitions of wifely *nushūz*
> made it an act requiring disciplinary measures from husbands highlights the
> asymmetrical relationship between spouses. In this conception, wives ranked
> below their husbands and owed obedience to them. When wives disobeyed
> their husbands, they rose above their divinely appointed rank and thus
> disobeyed God as well. Wifely *nushūz* was interpreted in a matter that
> bolstered the unequal relationship between husbands and wives. When wifely
> *nushūz* was interpreted as general disobedience, its meaning was distinctly
> different than that of husbandly *nushūz*. However, in most cases the meanings
> of wifely and husbandly *nushūz* overlapped, but the implications of these
> actions were altered so that they required discipline in the case of wives and
> amicable settlement in the case of husbands.[36]

Salvation for women was to observe a divinely ordained hierarchy and submit to their

husbands. Obeying a system of hierarchal order was a matter of catering to the superiority of

males. Upsetting this order meant that the wife's behavior was an affront to the privileged rank

of her husband. It further meant that she was challenging her place in the cosmic system of

dominion and her punishment was to remind her of her true place in the gendered hierarchy of

the world.

The consequence for men's *nushūz* or recalcitrance, although problematic in its own

right, was less of an affront to the system of dominion by virtue of the fact the he offended no

higher creature as nothing but God was above him in Islam's cosmic hierarchy. Naturally, the

amicable settlement in divorce that he was encouraged to pursue also mitigated the severity of

the offense. In Chaudhry's narrative, the purpose of marital relations – and indeed obedience -

does not seem to go beyond establishing, sustaining and maintaining patriarchy. When

theology and salvation do come to play, their function is to primarily serve a *worldly* hierarchy

where God is its enforcer. Ontological questions of salvation from 'deadly sins' (*kabāʾir*) or an

---

[36] Ibid., 68.

ontology and teleology of 'obedience' and its relative modes of self-cultivation do not seem to factor in any significant way.

Judith Tucker detracts from the above authors and instead focuses on the relationship between marriage, gender relations and sexual sin, namely zinā. Tucker explains that marriage has the specific purpose of legalizing sexual intercourse between men and women. The purpose of marriage for both proto-Sunnīs/Sunnīs and Imāmīs is to establish a venue for licit intercourse. Licit intercourse is the primary motivation of the practice of *nikāḥ* (marriage) and thus the "most important effect of the marriage contract." She writes that jurists may vary

> in the emphasis they place on the couple's or the man's pure enjoyment of sex versus marital sex as the key to legal reproduction, but the marriage contract is the first and foremost for the establishment of licit sexual relations between a man and woman.[37]

An outlet for licit sex was critical for the jurists, and marriage provided the ideal solution. Why was illicit sex so dangerous? For Tucker, rules regulating gender relations and gender spaces were all

> connected to the spectre of *fitna*, the lurking disorder that stalked the Muslim community thanks to the force and vitality of the human sex drive. It was the twin beliefs in the power of human sexuality and its potential for social disruption that animated the legal discourse on male-female interaction.[38]

Illicit sex for Tucker is dangerous in its potential for *fitna* or social disruption. Beyond this point, little is given in explaining the salvific teleology of marriage. Like other authors, marriage is primarily defined through its material function in the world and disconnected from its wider theological implications in so far as ontological and soteriological accounts of the self and the community are concerned.

---

[37] Judith E. Tucker, *Women, Family, and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008), 41-42.
[38] Ibid., 191.

Tariq Ramadan expands the theme of marriage not only on the social level, but in terms of personal fulfilment. He explains that

> It is through shared life and love that individuals, both women and men, attain their personal faith, their intimacy with God, with themselves, and with their spouse. Within a couple, human beings find complete spiritual, physical, and human fulfillment and this cannot be reduced to a mere code of conduct repeating the rights and duties of the spouses and in particular of women.[39]

Marriage for Ramadan is not just a code of rules, but part of a theological choreography of human beings and God. Marriage is holistic in its purpose, through it individuals find their physical and spiritual needs which are important ingredients for fulfillment in God. Ramadan's description, however, is not that of juristic discourse, but his own views as to what the purpose of marriage should be like. To the contrary, the view he presents is in response to a juristic tradition which he feels has stripped itself from 'spirituality' and theological meaning.

Ghassan Ascha in his liberal project of Islamic legal reform perhaps best summarizes, even if unwittingly, the discursive background of this approach:

> la foi (*îmān*, *ʿaqîda*) et les actes rituels (*ʿibâdât*) peuvent – pour la vie des croyants – subsister éternellement, mais qu'il en va autrement des prescription sociales (*muʿâmalāt)* pour la vie de la société.[40]

An underlying factor that likely animates this secular approach to the law is the assumption that marriage, as a "social prescription" is distinct from acts of faith and hence why it is subject to change and *secularization* and thus more easily disconnected from the primacy of theology and its corollaries of ontology, salvation and eschatology. Prayers and fasts are eternal, unchanging and directly pertinent to Muslim ontology; they are entirely subservient to salvation in the Hereafter whereas social prescriptions like marriage and divorce are not.

---

[39] Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), 226.
[40] Ghassan Ascha, *Mariage, polygamie et repudiation en islam: justification des auteurs arabo-muslmans* (Paris: Editions L'Harmattan, 1998), 7-8.

There are three themes that can be found in the mainstream academic literature on marriage/divorce in Islamic law that complement and overlap one another. The first theme reduces marital law in juristic discourse (precolonial/medieval/premodern/traditionalist) to mostly a matter of respecting and upholding gender hierarchy. God has established a system of dominion whereby a woman's existential purpose – as a wife – is to submit to her husband and obey him as a naturally superior and more favorable being. When sin and salvation play a role, it is to the extent that a wife refuses to obey and abide by the gendered structure of authority that God has imposed *in this world.* Ontological and teleological accounts of salvation from sin, particularly 'mortal sins' like zinā, are largely excluded or ignored, or at best, made subservient to larger concerns of a gender hierarchies. Worldly hierarchies and patriarchy define the existential purpose of humankind as far as gender relations are concerned, theological questions of salvation only serve to reinforce them.

The second theme views the marriage contract as largely a "secular" contract and commitment, one that merely defines the rights and obligations of couples for the ultimate purpose of social harmony. This harmony at its core is for establishing healthy lineages and respecting the authority structures of a patriarchal cosmology. Subverting male authority is subverting a structure of authority that God has placed. No further substantive explanation of the purpose of this authority is given. It may be that there is no ultimate purpose but simply abiding by God's will on earth and hence suggesting a form of *theological nihilism.* By theological nihilism, I mean a way of viewing the law where God's role is simply that of a lawgiver and punisher. Outside of legislating laws and punishing, there is no overt ontological relationship between the self, God and the soteriology of the rights and duties that governs this relationship. The God of theological nihilism is not unlike the God of some forms of deism

who, outside of legislation and punishment, is distant and without meaning in the existential and teleological matrix of the self – the *qalb* - and the choreography of virtues that define and ground its piety.

To recap: like the previous theme, salvation from zinā and ontologies of sin are largely if not completely absent. God's special revelation is not to purify hearts, nor is there a program for virtuous self-fashioning. God's special revelation is meant to uphold structures of power as far as marriage is concerned. Beyond this, God's presence in human (gender) relations is mostly absent.

The third theme sees marriage as a means of avoiding illicit sex and ensuring legitimate offspring, but the purpose of avoiding illicit sex and illegitimate children is primarily to avoid social discord in this world. This theme, like the previous ones, frames Islamic law primarily as a worldly and secular project, and the rights, regulations and codes that exist are there to fulfill one primary task; maintaining gendered (male) authority and avoiding social chaos on earth. An in-depth theological account of human activity, the self and its relation to law is only anecdotal, if not absent entirely.

To recap the above theme, little or no attention is paid to the soteriological framing of the law and the ontology of the normative Muslim subject and his/her relation to sin. This inattention, on some level, forwards a kind of metaphysical nihilism that is alien to many juristic traditions of Islam, particularly Twelver Shīʿism. Juridical texts are a special genre of literature meant as a logical exercise in thinking about the law but they do not exhaust the frame of reference from which Muslim jurists write from. The juridical texts are part of a larger choreography of literature that not only include the source-texts, works of theology, ethics and exegesis, but also more importantly, the oral tradition of the jurists as available in

the commentaries of their students as well as the Islamic legal principles or legal and moral maxims of the law (*al-qawāʿid al-fiqhīyah*) that animate and guide juristic discourse. It is the *qawāʿid al-fiqhīyah* that determine the ultimate orientation and historical *reorientation* of the law, at least in so far as Imāmī law is concerned. As Luqman Zakariyah notes, they are there to harmonize the opinions of scholars in particular cases "through principles laid down in order to depict the aims and objectives of the Sharīʿah."[41] The aim of the Sharīʿah is the good life, but a good life that is rooted in the idea of, and conducive to the salvation of the *qalb* in the Hereafter. In Imāmī law, many of these legal principles are subsidiaries and subsumed under the *theological* doctrine of Commanding the Good and Forbidding Evil[42] whose primary purpose is to ensure the maintenance and cultivation of piety and virtue and thus the soteriological success of the community. In the context of Islamic law, its primary function is to ensure that juristic conclusions are in line with, and not detrimental to the salvation of the community.

When this vantage point is taken into consideration, a whole new vision of juristic discourse comes to light. Where once sin and faith were largely studied under different topics such as Sufism, an oft-ignored ontological and soteriological symbiosis of sin, faith and juristic culture comes to light in Islamic law. In so far as Imāmī law is concerned, marriage in this vision is no longer just a legal enterprise of rights and duties, but part of an ontological project of salvation of saving the metaphysical heart. In this vantage point, marriage is an integral aspect of the soteriological and eschatological war against sin and the Devil.

Marital obedience on the part of wives is principally meant to prevent illicit sexual behavior and not necessarily maintain a gendered hierarchal order or even social harmony per

---

[41] Luqman Zakariyah, *Legal Maxims in Islamic Criminal Law: Theory and* Applications (Leiden: Brill, 2015), 17.
[42] As a legal doctrine, they are somewhat distinct as I explained earlier in the introduction.

se. Women's bodies are not just objects of desire, but they are primarily and essentially *objects of salvation*. If hierarchy, patriarchy and asymmetrical power is maintained in marriage, it is because it is assumed to contribute to the salvific welfare of the community in so far as preventing sin, and especially the sin of zinā, is concerned. Preventing zinā is not just about maintaining social harmony, but about maintaining the spiritual and ontological health of the community and thus saving it from damnation in the Hereafter. Whatever the assumption, gendered hierarchy and patriarchy are not essential in the idealized or ultimate cosmology of Imāmī juristic imagination. They are only useful tools that may themselves be inverted and sacrificed by the same jurists who advocate it if they become counterproductive to the soteriological project of marriage. The ultimate cosmology of Imāmī juristic discourse is therefore not gendered hierarchy and patriarchy, it is the ontological purification (*tazkīyah*) and revival (*iḥyāʾ*) of the *qalb* through salvation from the corrupting and corrosive agency of the Devil and his 'arsenal' of sin. Social harmony is not an ends in itself. If social harmony is to be maintained, it is because social chaos and disruption is detrimental to the formation of the self and the growth of *īmān* (an ontological bond with God) and therefore conducive to the expanding presence of Satan. If anything, social harmony is a *means* to laying the fertile grounds for the production and flourishing of *īmān*. Without *īmān,* the purification of the heart and the eschatological battle against sin, social harmony becomes completely meaningless and purposeless in the Imāmī narrative of *fitnah*. For this reason, Islamic law and marriage, especially in their premodern forms, *cannot* be essentialized as secular practices whose sole or primary aim is the maintenance of patriarchy and gender hierarchy.

**0.3: OUTLINE OF CHAPTERS**

This study can only make limited claims about Sunnī and proto-Sunnī law. Instead, it offers a view of the Twelver Shīʿī tradition that complements and revisits current assumptions concerning the teleology of Imāmī juristic discourse on marriage. Although its claims will largely and sometimes exclusively remain relevant to Imāmī law, it is still meant to challenge a particular set of essentializations of Islamic law and gender relations.

Chapter 1 is an introduction to the metaphysical heart (*qalb*) in the Imāmī discursive tradition. It highlights the role of the heart as the normative loci of salvation for the normative Shīʿī Muslim and his/her fashioning of the self. It then proceeds to delineate the role of the Devil and sin in the corruption and death of the *qalb* which, as a result, opens the path for the human soul's damnation in the Hereafter. As far as sex is concerned, this chapter establishes zinā as the primary bodily antagonist of the *qalb*. Although there are worse sins, zinā is most worrisome for two reasons; the universality of human vulnerability to this particular sin and its communal effect through the birth of illegitimate children. It ends with a discussion on the importance of Commanding the Good and Forbidding Evil as a theological and soteriological concept in framing the course of juristic discourse. Here I conclude that the effect of sin is not merely an action that incurs divine wrath and displeasure, but it operates on the level of disorienting and disrupting one's inner spiritual faculties and corrupting the ontological bond between the normative Shīʿī Muslim and God. Sin thus acts to subvert the cultivation of the pious self.

Chapter 2 looks at permanent marriage as the prime solution to the problem of zinā. It delineates the teleology of marriage as an alternative for illicit sexual activity as well as the production of the next pious generation. Marriage is not so much about obeying hierarchies but

a mutual process of ensuring the salvific success of the couple and the believing community at large. At its core, it is a mode of self-fashioning. This chapter thus studies the juristic recommendations of marriage and the soteriological context of choosing spouses. It first outlines the juristic recommendations of what kind of spouses to choose and what kinds of sex to avoid in order to promote salvific success and ward off Satanic influence. It then presents two case studies where legal principles/maxims (as derivatives of the theological doctrine of Commanding the Good and Forbidding Evil) succeed in inverting salvifically detrimental conclusions in the law. The first case study is interfaith marriage. I argue that Imāmī jurists were historically wary of interfaith marriages because of the perceived detrimental spiritual effects of marrying people outside the faith and the effect it would bear on children. The second case-study is prepubescent marriage. I argue that although as a first order imperative, Imāmī jurists allowed prepubescent children to marry adults, they had no qualms in inverting its permissibility through the principle of ʿadam al-mafsadah if the marriage was harmful to the child (usually female) and thus conducive to marital discord. This chapter briefly concludes with another case of inverting a father or male guardian's authority in marriage when the refusal of a potential groom conflicts with the soteriological interests of the potential bride. Chapter 3 studies temporary marriage as another mechanism to save the community from zinā. More specifically, it looks at the relationship between mutʿah (temporary marriage) and the formation of the male pious self by studying the controversy of the permissibility of the practice with female perpetrators of zinā (zāniyah). One camp of jurists historically forbade it, another permitted it. Despite this divergence, the disagreement was based on what ruling was soteriologically more beneficial. The permissibility camp saw mutʿah as unlikely with morally chaste women. If the practice was to have any real-world use, the pool of women had to be

enlarged and thereby include zāniyahs who, by their sinful disposition, were more likely to engage in such relationships. The impermissibility camp forbade the marriage as sex with morally corrupt people would inevitably have a detrimental effect on the heart of the believer. Corrupt ontological states could therefore be transmitted through sex. This camp also forbade the practice because of the possibility of bringing children into the world where one parent was of questionable moral character. The chapter ends with a review of the modern ban on the mutʿah mistress by the high ranking Imāmī jurist Nāṣir Makārim Shīrāzī. The ban is unprecedented, but the inversion of this historically mainstream position is done through the principle of Commanding the Good and Forbidding Evil. Shīrāzī sees the unchecked practice of temporary marriage as a danger to the health and stability of permanent marriages, the main staple of salvation in the Imāmī tradition.

Chapter 4 studies wife-beating and husband lashing in Imāmī law. For wives, it observes that *nushūz* in Imāmī law is not an affront against the husband, but an affront against God and hence not, at its core level, a patriarchal practice. It argues that in Imāmī juristic thought, the problem of the *nāshizah* (recalcitrant/rebellious wife) is not her disobedience to a gendered hierarchy of power (that is only of secondary importance), but that her action of denying sex makes her husband more likely to engage in illicit sexual behavior. Since the disciplinary rules of female *nushūz* are instituted to act as a control for compulsive male desires, *nushūz* is primarily seen by Imāmīs as a subversion of the salvific teleology of marriage that aims to prevent sexual sins. A husband's *nushūz*, albeit framed differently, also endangers the harmony of marriage and makes sexual sins more likely. As a result, like female *nushūz* (or possible *nushūz*), the husband also receives corporal punishment in an even more severe form. Beating

is thus inclusive of both husband and wife and is a response to transgressions against the soteriological aims of marriage and not necessarily transgressions against gendered hierarchy. <u>Chapter 5</u> studies obligatory *khulʿ* divorce in Imāmī law. It argues that divorce presents the ultimate clash between male and female authority in Islamic law. Although patriarchy is most apparent in divorce law, Imāmī jurists invert the husband's asymmetrical prerogative to divorce when marital life puts the wife's salvation in danger by making her prone to sin and zinā. This prerogative gets granted to the wife irrespective of the husband's will. The chapter concludes with a discussion of Yūsuf Ṣāniʿī's treatment of obligatory *khulʿ*. I argue that although part of his approach presents an epistemological break with the Imāmī tradition by virtue of his advocacy of modern equal-rights discourse, the role of salvation in his thought is nevertheless in line with the Imāmī tradition's collective memory.

## 0.4: METHODOLOGY AND GUIDING THEORETICAL PRINCIPLES

When I first began thinking about the subject of this study, I came to it from a social scientific, and more specifically, an anthropological perspective which has guided and shaped most of my graduate training. My main interest was to "do" an anthropology of religion, or more precisely, give a social scientific and anthropological account of modern Imāmī juristic culture and the discursive dynamics that produce their legal works on gender relations. I also wanted to see how female agency in the legal and *ḥadīth* sources shaped the subtleties of juridical inversions of asymmetrical power relations between males and females in marriage and divorce law. As my research progressed, my work took an innovative turn and became largely a work of phenomenological theology with only a marginal ethnography. I found myself unable to give an anthropological account of modern Imāmī juristic discourse without first dwelling into the

theological world that fashioned so much of it. This theological account of juristic culture and Islamic law ended up taking a life on its own and became the central thesis of this dissertation. Despite this shift in focus, some of the central theoretical guiding principles – and primary inspiration -  of this dissertation are derived from anthropological accounts of ritual practice, morality and gender.

<p align="center">***</p>

Judith Butler states that often enough, "religion functions as a matrix of subject formation, an embedded framework for valuations, and a mode of belonging and embodied social practice."[43] Ritual is a critical factor in this matrix of subject formation. The affinity between ritual practice and marriage is made possible by Imāmī law's insistence that marriage is on some fundamental level a ritual practice (*ʿibādah*.) By ritual, I adopt Talal Asad's premodern sense of the term, namely a "script" that is to be read and performed, and whose performance involves "abilities to be acquired" which presupposes a program and a model of excellence that is in accordance with rules that are sanctioned by those in authority[44] In the *idealized* juristic discourse of marriage, the practice of marriage was linked to the idea of an acquisition of virtues, proper moral dispositions and "spiritual aptitudes" which were to be put in the service of God.  A *ḥadīth* attributed to the Prophet Muhammad, which both Imāmī and Sunnī traditions share, states that "marriage is of my *sunnah* (exemplary tradition)."[45] For the vast majority of Imāmī jurists, the virtues that were developed through the practice of marriage were meant to develop an ability to behave in accordance with the Prophetic example akin to

---

[43] Judith Butler, "Is Judaism Zionism?" in *The Power of Religion in the Public Sphere*, ed. Eduardo Mendieta and Jonathan Vanantwerpen (New York: Columbia University Press, 2011), 72.

[44] Talal Asad, *Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993), 62.

[45] See fn. 187.

the "saintly exemplars" of early Christianity as Asad states. Acquiring this ability, on some important level, was a "teleological process" in order to "make the self approximate more and more to a predefined model of excellence."[46] As an ontological process of self-development through approximation to the Prophetic model, the negation of carnal sin and the Devil's snares, marital practice – much like ritual proper - was to imbue in its practitioners a "proper organization of the soul."[47] Marriage, in the Imāmī juristic *ideal*, was thus aimed at fashioning a disposition which structured one's thoughts, behavior and attitude towards God and sin. Like Christian monastery rituals, marriage was part of the overall scheme in the development of the Muslim self, and in the juristic ideal, "there could be no radical disjunction between outer behavior and inner motive"[48] and between bodily techniques and interior virtue.

In my criticism of mainstream accounts of marriage in Islamic law, I am arguing that marital law in Islam cannot simply be reduced to a series of codes and rules that are merely to be followed, but as I show, it is, in the Foucaultian sense, an ascetic practice, a formation of the self into an *ethical subject* that is aligned with a particular conception of (metaphysical) truth and not simply following the procedural mechanism of a gendered hierarchy. Foucault states:

> [F]or an action to be "moral", it must not be reducible to an act or a series of acts conforming to a rule, a law, or a value. Of course all moral action involves a relationship with the reality in which it is carried out, and a relationship with the self. The latter is not simply "self-awareness" but self-formation as an "ethical subject", a process in which the individual delimits that part of himself that will form the object of his moral practice, defines his position relative to the precept he will follow, and decides on a certain mode of being that will serve as his moral goal. And this requires him to act upon himself, to monitor, test, improve, and transform himself. There is no specific moral action that does not refer to a unified moral conduct; no moral conduct that does not call for the forming of oneself as an ethical subject; and no forming of the ethical subject without "modes of subjectivation" and an "ascetics" or "practices of the self" that support them. Moral action is indissociable from these forms of self-activity,

---

[46] Asad, op. cit., 62.
[47] Ibid., 138.
[48] Ibid., 63.

> and they do not differ any less from one morality to another than do the systems
> of values, rules, and interdictions.[49]

The overlap between moral codes, the formation of the self and its modes of subjectivation cannot be understated. As Saba Mahmood explains, Foucault's framework suggests multiple ways one may relate to moral codes in establishing particular capacities of the self and a norm.[50] The embodied form that obedience to a moral code takes place in is necessary in the ethical analysis of framing the specific kind of subject that is formed. As such, these self practices are

> technical practices for Foucault and include corporeal and body techniques, spiritual exercises, and ways of conducting oneself – all of which are "positive" in the sense that they are in, and immanent to, everyday life. Notably, the importance of these practices does not reside in the meanings they signify to their practitioners, but in the *work they do* in constituting the individual; similarly, the body is not a medium of signification but the substance and the necessary tool through which the embodied subject is formed.[51]

Mainstream Imāmī jurists recognized moral obligations in marriage not only through Islamic law per se but more importantly, as an ontological status and a process of becoming that was framed through its soteriological and eschatological concepts of truth. Marriage – as a mode of subjectivation - was grounds for a practice that provided the material substances for the ethical domain through which the self was to be realized.

The kind of self that was to be realized and cultivated was the (idealized) virtuous and pious self where the observation of moral codes and the proper operation of the body was expected to lead to an affinity and an ontological intimacy with the divine thereby transforming the human *qalb*, soul and body in the "image of God" as found in the primordial Prophetic prototype of Adam (*khalaqa Ādama ʿalā ṣūratihi*). The body, and especially its

---

[49] Michel Foucault, *The Use of Pleasure: Volume 2 of the History of Sexuality*, trans. Robert Hurley (New York: Vintage Books, 1990), 28.
[50] Mahmood, *Politics of Piety*, 28-29.
[51] Ibid., 29.

performance of sex, was the means through which the pious self was to be cultivated and achieved.

The juridical mediation of the body cannot – to borrow a term from Mahmood on the disciplines of *ṣalāt* – be seen simply as a "social imposition that constrains the self but rather (under certain conditions) as a means by which the self is realized."[52] As such, piety (as a sense of closeness to God and distance from Satan) is a "manner of being and acting" that suffuses "all of one's acts" in all realms of life. In the mainstream Imāmī tradition, the desire to abstain from illicit sex and leading the morally good life is not *immediately* natural; it must be cultivated and created through a series of disciplinary acts not only through marriage, but also in one's pre-marital and post-marital (divorce) state. This includes fasting, not gazing at unrelated people whom one may be attracted to, the amount of food one eats and in the case of married peoples, the mutual availability for sex in its appropriate times and places. In the event of marital breakdown, one must exit it in a fashion that does not lead to the subversion of the pious self. One must therefore not engage in acts that weaken *īmān* but engage in acts that strengthen it.

Obedience to God through the discipline of marriage is a cumulative process through which one, over time, creates the pious self through patience, and more importantly, the disciplinary channeling and control of desires. The acquisition of piety is therefore not possible without the control and regulation of sexual desires which marriage – above all relational practices - makes possible. Like ritual prayer, marriage as a ritual act is "both part of a larger program of discipline through which piety is realized" and often "a critical condition for the

---

[52] Saba Mahmood, "Rehearsed Spontaneity and the Conventionality of Ritual: Disciplines of "Ṣalāt"," in *American Ethnologist* 28, no. 4 (November 2001): 828-829.

performance of piety itself."[53] In this sense, marriage and sex as pious techniques of the body

in Imāmī juristic law can be thought of as a technology of the self[54] aimed at producing what

Bryan S. Turner calls "religious excellence."[55] Through marital practice, the body is a tool for

becoming the ideal person and acquiring the ideal state. An important point, however, should

not be missed. As Mahmood points out, the point is not "that one acts virtuously but also how

one enacts a virtue (with what intent, emotion, commitment, etc.), constant vigilance and

monitoring of one's practices is a critical element in this model of self formation."[56] In marital

practice, self formation was not an isolated performance for the jurists. It was performed

mutually between husband and wife. The threat of divorce, obtainment of dowries, husband-

lashing and wife-beating (see chapter four) were not merely "motivational devices" to ensure

that the disciplinary responsibilities and rights of marriage were respected, but as a theological

matter of Commanding the Good and Forbidding Evil, they were essential qualities of pious

action and discipline in themselves. Individuals were not only there to monitor themselves, but

they were – *ideally*, as a married couple (whom are weaved into *one* self like a garment in the

Qur'anic narrative)[57] - there to monitor each other and assess each other's progress toward the

virtuosity of *taqwa* both as a form of piety and an eschatological and virtuous fear of God[58] -

which, as Mahmood correctly describes, is an inward orientation and disposition as well as a

---

[53] Ibid., 834.

[54] On the technologies of the self, Foucault states that the technologies of the self are not just affected by the individual's own means, but also *with the help of others*. He says: "technologies of the self, which permit individuals to effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immortality." See Michel Foucault, *Technologies of the Self: A Seminar with Michel Foucault*, ed. Luther H. Martin, Huck Gutman and Patrick H. Hutton (Amherst: The University of Massachusetts Press, 1988), 18. On a brief discussion on the relationship between the technologies of the self and sin in early Christianity, see Foucault, *About the Beginning of the Hermeneutics of the Self: Lectures at Dartmouth College*, 1980, trans. Graham Burchell (Chicago: University of Chicago Press, 2016), 75.

[55] Bryan S. Turner, "Introduction: The Price of Piety" in *Contemporary Islam* 2, no. 1 (2008): 2.

[56] Ibid., 838.

[57] Q2:187.

[58] Mahmood, *Politics of Piety*, 145.

manner of practical conduct.[59] Marriage was not just any formation of the self, but a *mutual*

formation of the self.

In the Imāmī discursive tradition, piety was not isolated to its original cultivators but

was to be transferred generationally and communally. As feminist anthropologists demonstrate,

it is not just life that is reproduced through the reproductive process but the attributes of the

reproducers are also passed down the line.[60] The social unit and community, as Wael Hallaq

observes in his review of sociological literature, establishes in individual members

> certain a priori, axiological modes of thought—modes that engender norms
> and ways of thinking that gain a common-denominator status in that social
> unit, but to which some members tend to give certain modifications to their
> individuated selves.[61]

Through the formation of the pious self, piety and virtue were ideally *expected* to transfer – at

least in part -  vertically to one's offspring and horizontally to the community (as per the

famous tradition, *al-mar'u ʿalā dīni khalīlihi* – "a person follows the (spiritual) way of life of

his/her friends"). Spiritual auras are not just cultivated; they positively spread through social

relations just as sins negatively infect others. It is not just generic virtues that are inherited, but

gender specific virtues are also transferred through performative repetition. Through repeated

inheritance, a feminine virtue, for example, is not only self performed, but is compulsory on

some level. As Judith Butler demonstrates, femininity is not a product of choice nor is it a

singular act but may be the

> forcible citation of a norm, one whose complex historicity is indissociable from
> relations of discipline, regulation, punishment. Indeed, there is no "one" who
> takes on a gender norm. On the contrary, this citation of the gender norm is
> necessary in order to qualify as a "one," to become viable as a "one," where

---

[59] Ibid., 4.

[60] See for example Sylvia Yanagisako and Carol Delaney (editors), *Naturalizing Power: Essays in Feminist Cultural Analysis* (New York: Routledge, 1995). For non-feminist accounts, see Robert Trivers, *Natural Selection and Social Theory: Selected Papers of Robert Trivers (Evolution and Cognition)* (Oxford: Oxford University Press, 2002).

[61] Wael Hallaq, "On Orientalism, Self-Consciousness and History," in *Islamic Law and Society* 18 no. 3-4 (2010): 6.

> subject-formation is dependent on the prior operation of legitimating gender norms.[62]

Gender performativity is naturalized and as corollary of this naturalization, Butler intends that heterosexuality (in the modern context) and an opposite sex relationship ideal (in the premodern context) is also privileged and naturalized. In the frame of Imāmī juristic discourse, compulsive femininity *and* masculinity is expected to produce a normative gender identity through the legal imposition of a gender program. Through the inheritance of virtue, prior legitimating gender norms and the agency of self-activity, the development of the virtuous and pious formation of the future generation of the believing community is enabled. The struggle against zinā and intra marital sins (e.g. *nushūz*) is largely based on the assumption that it exacerbates an interruption, discontinuity and subversion of the process of the cultivation of the self, both individually and communally.

<div align="center">***</div>

This subsection will address the context which this study must be read in. This work is a study of texts and not a historical or sociological study of Muslim marriages. My dissertation sees the Imāmī tradition in its textual aspect as an embodiment of a set of conscious practices that are aimed at cultivating the pious and virtuous self. My interest is not to investigate what actually happens in Muslim marriages and divorce (indeed, to even attempt to generalize Muslim marriages in this way would be naïve at best, let alone presumptuous) but to study the assumptions and ideals of the authors (Imāmī jurists) who write these texts and how they draw inspiration from and negotiate with source-texts in formulating marriage and divorce laws in

---

[62] Judith Butler, "Critically Queer," in *The Routledge Queer Studies Reader* ed. Donald E. Hall, Annamarie Jagose, Andrea Bebell and Susan Potter (New York: Routledge, 2013), 23. Here in the Nietzschean sense, the self is a social creation, see Alasdair MacIntyre, *After Virtue: A Study of Moral Theory*, Third Edition (Notre Dame: University of Notre Dame Press, 2007), 150.

the moral and salvific context of the "rules of obligation"[63] (*aḥkām al-taklīf*).[64] These moral

categories find their basis in the common discursive notions of salvation and the cultivation of

the pious and virtuous self in the Imāmī tradition and its collective memory.[65] The written texts

are gateways to the imagination of the jurists and the moral ideals they uphold. Although at

times this may not be evident, especially when the legal discourse becomes highly pedantic,

works of legal maxims as well as the works of their students, or later commentators that

inherited the oral transmission of their theological concerns, are often the most helpful in

unveiling the theological drive behind their understanding of the law's function.

This study by no means exhausts the entirety of the juristic literature on marriage and

divorce law in the Imāmī tradition. It does, however, highlight the most central texts of the

tradition that have shaped the collective memory of Twelver Shīʿī law. The texts that I select

begin in the ninth century CE (third or fourth century A.H) – the formative period of Imāmī

juridical culture - and span until the beginning of the twenty-first century. In such a long span

of juridical thought, discontinuities between the jurists over the centuries was inevitable. These

discontinuities included, among other things, the historical debates and tensions revolving

around the probative force of the source-texts, the formulations of an Imāmī legal theory (*uṣūl

al-fiqh*), the extent of a jurist's authority, as well as the political and social concerns that

shaped much of the juridical conclusions found in the texts.[66]  Yet one persistent and

---

[63] For this term and definition, see Mohammad Fadel, "A Tragedy of Politics or an Apolitical Tragedy," *Journal of the American Oriental Society* 131, no. 1 (September 2011): 119.

[64] The *aḥkām al-taklīf* refers to the legal categorization of all human acts and omissions into five moral categories The five standard categories are: permitted (*mubāḥ/ḥalāl*), recommended but not obligatory (*mustaḥabb*), disapproved but not forbidden (*makrūh*), forbidden (*harām*), obligatory (*wājib*).

[65] I would like to thank Hossein Modarressi of Princeton University for introducing me to the idea of collective memory early on in my graduate studies.

[66] Despite these debates, roughly around eighty percent of current Imāmī legal practice has been consistent and can be established through its historical collective memory and uniform practice. I would like thank Hossein Modarressi again for this insight.

continuous theme that I have found throughout the texts, irrespective of the locality or century they were written in, is the primacy accorded to salvation in grounding and orienting Imāmī juristic culture in its anthropology of the normative Muslim and his/her subject formation. It is this common goal of 'soteriological law' that allows me to undertake this bold task of tracing a continuous line in the collective memory of Shīʿī legal culture throughout the centuries.

<center>***</center>

A few technical terms used in this study need to be qualified, namely 'theology' and 'secular'. The usage of the term theology does not necessarily equate to the science of *kalām* (*ʿilm al-kalām*). The law and *kalām* historically evolved as separated disciplines to the extent that Seyyed Hossein Nasr states that "one can be a very serious Muslim without interest in *kalām*, or Islamic theology."[67]

I use the term "theology" to denote a relationship with God and all that pertains to it. More precisely, I use it holistically to denote an ontological relationship with God that is grounded in soteriology and eschatology. In this sense of the term, theology and Islamic law are indispensably, essentially and necessarily linked with one another. As Umar F. Abd-Allah states, in the eyes of Muslim jurists "the primary purpose of Islamic law in their view was the well-being and salvation of the entire community."[68] This does not, however, discount the associative role that *kalām* historically played in the development of Islamic law and jurisprudence even if they were historically separate enterprises and disciplines. Kevin Reinhart, for example, states that although Islam's sciences had their own distinctive history, the sciences nevertheless developed holistically and harmonized with each other and were

---

[67] Seyyed Hossein Nasr, *The Heart of Islam: Enduring Values for Humanity* (New York: HarperCollins, 2004), 118.
[68] Umar F. Abd-Allah, "Theological dimensions of Islamic law," in *The Cambridge Companion to Classical Islamic Theology*, ed. Timothy Winter (Cambridge: Cambridge University Press, 2008), 249.

<center>40</center>

tightly integrated to the extent that a good portion of the law, especially legal theory, cannot (at

least with Ḥanafīs) be fully understood without its association with the debates of *kalām*.[69]

Another term that needs to be qualified is my usage of the word secular. Talal Asad

makes a distinction between the secular and secularism. By secular he refers to an epistemic

category that brings together "certain behaviors, knowledges and sensibilities in modern

life."[70] Secularism on the other hand is a doctrine and political arrangement of the state. My

usage of the term secular deviates from Asad's conception in so far as I use it as an opposite of

the theological. I first drawn on Elizabeth Shakman Hurd's explanation of the secular as an

approach that is "associated with the worldly or temporal [which] carries no *overt* [emphasis

mine] references to transcendent order or divine being."[71] Fundamentally, however, I see the

secular as a dismissal of the *primacy* of theology as particular mode of knowing and hence

defined through an *absence*, mental discontinuity or otherwise discarding of a principle.[72] In

this sense, I take inspiration from one of Charles Taylor's definitions of the term. Taylor gives

three ways one can look at the secular and secular societies. The first way contrasts the secular

with a context where no human activity can be conducted without "encountering God." To be a

secular society is to undertake, say a political activity, without any reference to, or encounter

with God. The second meaning is a falling off from belief in God and religious practice. The

third meaning of secular, a meaning which interests Taylor, is a social context where belief in

---

[69] Kevin Reinhart, "'Like the Difference between Heaven and Earth:" Ḥanafī and Shāfiʿī Discussions of *Farḍ* and *Wājib* in Theology and Uṣūl," in *Studies in Islamic Legal Theory*, ed. Bernard G. Weiss (Leiden: Brill, 2002).

[70] Talal Asad, *Formations of the Secular: Christianity, Islam and Modernity* (Stanford, Stanford University Press, 2003), 25.

[71] Elizabeth Shakman Hurd, *The Politics of Secularism in International Relations* (Princeton: Princeton University Press, 2008), 13-14.

[72] Take, for example, Charles Taylor's comparison between altruism in the theological and secular world views. Altruism in the secular ethic is primarily defined through the *discarding* of an outlook that is essential to Christianity, namely the love of God; see Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge: Cambridge University Press, 2006), 22.

God is an option as opposed to a context where it is virtually impossible not to believe in God.[73] The first sense of the term is one which I partially rely on with some modification. I see the secular as the negation of theological *primacy*. This theological mode of knowing and being, as espoused by Imāmī jurists, is a way of life and viewing the world (including law, morality and the formation of the self) that posits the centrality of a theological chain of being that finds at its center God as the "ground for being" whereby the existential relationship between creature and God is inseparable. Encounter with God, even when it is through a legal code of practice, is an indispensably esoteric activity. In this view, all human activity is inextricably linked to the soul's relationship with the divine, either positively or negatively. But even in separation the ontological relationship remains; meaning that when separation or break does happen, it is only, as the mainstream Imāmī tradition claims, a result of a mental state akin to what Martin Laird calls a "great illusion" that is generated by the mind.[74] As such, theological primacy (in the law), as opposed to the secular, is not just an exoteric principle and way of relating to God, but a fundamentally esoteric relationship and way of viewing the world and all activities therein.


## 0.5: A NOTE ON MY AIMS AND SUBJECTIVITY

My aim in this study is to provide a phenomenological account of what I understand to be the collective memory of the Imāmī juristic tradition. My intention is not to give a theological description of what I think Islam and Shīʿism "really are," but what I have concluded - to the best of my knowledge - what most Imāmī jurists thought Shīʿī Islam and the Sharīʿah "were"

---

[73] Charles Taylor, *A Secular Age* (Cambridge: The Belknap Press of Harvard University Press, 2007), 1-4.
[74] Martin Laird, *Into the Silent Land: A Guide to the Christian Practice of Contemplation* (Oxford: Oxford University Press, 2006), 15.

aimed at being based on a collective observation of their writings. If I speak of a Qur'anic and

ḥadīth narrative, an Imāmī discourse, or a telos of the Sharīʿah, I mean to do so from the

perspective of the writers of the law and its various traditions that have shaped the discourse of

Islam, primarily as understood by scholars of the Imāmī tradition. Similarly, if I speak of a

normativity, I do so within the perspective of that discursive juristic tradition unless specified

otherwise. This stance requires me to adopt the internal view of what I believe the tradition is

teaching.  In so doing, I do not claim that I am espousing a 'true' conception of Imāmī teachings

on this subject, but rather that my interpretation unpacks the best account of the inner logic of

Imāmī discourse on sex, marriage and salvation.

Furthermore, as I have expressed in this study, when I refer to a continuity and a

collective memory in the Imāmī tradition, I do not deny the historical contradictions, tensions,

debates and evolution that shaped most of Imāmī history in all its scholarly disciplines from the

first time it became a self-contained school in the mid-eight century common era up until the

twenty-first century. Despite these differences, certain normativities do exist both among Imāmī

jurists as well as other legal schools in Islam without which no coherent narrative of Islam, let

along Shīʿīsm, can be established. One of these shared concerns I have identified is the concern

for the primacy of salvation of the believing Shīʿī community who are the objects of their

writings.

Given my background in anthropology, this introduction would not be complete if I did

not speak of my own subjectivity. I cannot deny that my account of the Imāmī juristic

imagination is what I believe to be the most coherent version of its discursive legal tradition. I

believe that these subjective attempts are true for all academic contributions. Nevertheless, I also

cannot deny the layers of personal and educational experiences that have shaped my view of the

world and have, by extension, mediated my understanding of the object of my study. These layers include my status as a second-generation Iranian male who is born and raised in North America and has mostly lived an upper middle class life in Canada and the United States. These layers also include my education that has mostly, if not entirely taken place in Western institutions, my background in the anthropology of religion, training in Shīʿī seminary studies, as well as my immersion in and identification with post-colonial feminism. Perhaps the latter part of my subjectivity, that of post-colonial feminism, may have colored much of what I have written here and has been the lens through which I have directed much of my critiques and the vantage point from which I have developed my theories on the Imāmī juristic tradition. As such, I have not embarked on this study as a neutral and unbiased subject, but one who, like any other social being, has his perceptions mediated by the experiential baggage he brings to the table.

CHAPTER ONE

ZINĀ AND THE FASHIONING OF THE METAPHYSICAL HEART IN IMĀMĪ
SOTERIOLOGY

## 1.1: INTRODUCTION

In his seminal study of Qur'anic semantics,[75] Toshihiko Izutsu provides us with an analytical

study of key-terms in the Qur'an with the goal of giving the reader a conceptual grasp of what

he believes is the Qur'anic *weltanschauung* or the "Qur'anic vision of the universe."[76] Izutsu

argues that as a "language of Revelation," the Qur'an's vocabulary grounded many of the key-

terms in post-Qur'anic systems.[77] Although there may have been a shared sense of what some

of these terms meant across many of the schools within the discursive tradition of Islam,[78] the

---

[75] Toshihiko Izutsu, *God and Man in the Qur'an: Semantics of the Qur'anic* Weltanschauung (Petaling Jaya: Islamic Book Trust, 2002).

[76] Ibid., 3.

[77] Ibid., 42.

[78] This term was popularized by Talal Asad in describing Islam or even premodern Christianity, see Talal Asad, *Genealogies of Religion,* 28. I prefer to use this term instead of "religion" as the latter (as a general definition) implies an "autonomous essence," which Asad cautions against for it "invites us to define religion (like any essence) as a transhistorical and transcultural phenomenon. It may be a happy accident that this effort of defining religion converges with the liberal demand in our time that it be kept quite separate from politics, law, and science - spaces in which varieties of power and reason articulate our distinctively modern life. This definition is at once part of a strategy (for secular liberals) of the confinement, and (for liberal Christians) of the defense of religion." Asad is thus emphatic about the historicity of this attitude as "this separation of power is a modern Western norm, the product of a unique post-Reformation history." Ibid. To avoid such pitfalls, I see "discursive tradition" as the more appropriate term. Charles Hirschkind explains Islam – a discursive tradition - as "a historically evolving set of discourses embodied in the practices and institutions of Islamic societies and hence imbricated deeply in the material life of those inhabiting them." see Charles Hirschkind, "Heresy or Hermeneutics: The Case of Nasr Hamid Abu Zayd," *The American Journal of Islamic Social Sciences* 12, no. 4 (1995): 464. As so much of this study is textual in nature, Saba Mahmood's longer summary of Asad is the most relevant and encompassing when she writes that a discursive tradition's "pedagogical practices articulate a conceptual relationship with the past, through an engagement with a set of foundational texts (the Qur'an and the ḥadīth), commentaries thereon, and the conduct of exemplary figures. Tradition, in this sense, may be conceived as a particular modality of Foucault's discursive formation in which reflection upon the past is a constitutive condition for the understanding and reformulation of the present and future. Islamic discursive practices, in this view, link practitioners across the temporal modalities of past, present, and future through pedagogy of practical, scholarly, and embodied forms of knowledge and virtues deemed central to the tradition. Clearly indebted to Foucault's conception of power and discourse, Asad's formulation of tradition draws attention both to micropractices of interpersonal pedagogy, through which the truth of a particular discursive practice is established, and to the macrolevel of historically sedimented discourses, which determine the possibility of what is debatable, enunciable, and doable in the present." As a result, Mahmood argues that an Islamic discursive tradition "is therefore a mode of discursive engagement with sacred texts, one effect of which is the creation of

conceptual understanding of these key-terms in this vast expanse were by no means identical. Each particular school developed its own set of conceptual parameters and limits of possibility in terms of what they could imply even if there were some degrees of conceptual overlap.

This chapter introduces the theological and soteriological background to juristic thinking in Imāmī law. It looks at the relationship between sin and the salvation of the metaphysical heart as a context for the cultivation of the pious self in the Imāmī juristic imagination. It looks at sex as a technique of the body and a practice that is soteriologically operative and thus integral in defining the relationship between sin and salvation of the heart. The link between sex and salvation has produced thousands of topics and subtopics over the centuries on correct sexual practice. Most of these topics have fallen within two major categories in Imāmī law, marriage and *zinā*. There are, of course, other forms of sexual practice, such as concubinage, or same-sex relations, but none have been as prominent as these two issues. Marriage and *zinā* represent the archetypal opposites of virtue and vice in the Imāmī tradition in so far as sexual practice is involved in the technology of the self. On the one hand, marriage is the most common and accessible practice that prevents the community from illicit and damning sexuality activity while zinā is the most feared sexual vice on the other, which incidentally, marriage, as an ascetic practice, is designed to prevent. *Zinā* is the most ubiquitously discussed sexual vice in Imāmī legal literature not because it is the most severe of vices[79] but because of the combined reason that it is *the* vice that the believing community is

---

sensibilities and embodied capacities (of reason, affect, and volition) that in turn are the conditions for the tradition's reproduction" and as such, when the question of religious power is concerned, she is emphatic that "such a concept does not assume all-powerful voluntary subjects who manipulate the tradition for their own ends, but inquires into those conditions of discursive formulation that require and produce the kind of subjects who may speak in its name." See Saba Mahmood, *Politics of Piety:* 115-116. The Imāmī *tradition* in its textual aspect can thus be seen as an embodiment of a set of conscious practices that are aimed at cultivating the pious and virtuous self.

[79] There are other sexual practices in the Imāmī juristic tradition that are worse than zinā, such as rape or bestiality or same-sex intercourse. See the introduction of this study.

most susceptible to thus posing the greatest soteriological danger to it. Sexual vice and zinā are subversions of the Imāmī project for cultivation of the virtuous and pious self.

This first part of this chapter will study a number of key-terms that shaped much of the Imāmī *weltanschauung,* and by extension, Imāmī legal soteriology. It will begin by looking at the centrality and essential role that the metaphysical heart, or *qalb*, plays in the salvation of the normative Muslim. It will then describe zinā as the primary antagonist of salvation and the metaphysical heart within the sphere of sexual practice.

The second part of this chapter will study the principle of *al-amr bi al-maʿrūf wa nahī ʿan al-munkar* (Commanding the Good, Forbidding Evil) as an ascetic, moral and salvific endeavor in Imāmī law. The principle is not simply a legal mechanism for deriving rulings, but originally a theological doctrine that is a requisite for salvation in the Imāmī tradition. As a *legal* doctrine, along with its other sister doctrines such as *ʿadam al-mafsadah* (all of which are derivatives of the theological doctrine of Commanding the Good and Forbidding Evil), I argue that for Imāmī jurists, it is intended to ensure that juristic rulings stay in line with the soteriological aims of the law. In other words, "Commanding the Good and Forbidding Evil" is intended by the jurists to keep a continuous link between soteriology, morality, the law and the ongoing the fashioning of the pious heart.

As such, the central aim of this of this chapter is to suggest that the foundation that governs sexual practice in Imāmī law and the wider collective memory[80] of Shīʿism is

---

[80] My understanding of Imāmī collective memory, as I suggested in a previous note, was inspired by my discussions with Hossein Modarressi. It is also partly inspired by Alasdair MacIntyre's notion of a tradition as historically extended and socially embodied argument. MacIntyre writes that a "living tradition...is a historically extended, socially embodied argument, and an argument precisely in part about the goods which constitute that tradition. Within a tradition the pursuit of goods extends through generations, sometimes through many generations. Hence the individual's search for his or her good is generally and characteristically conducted within a context defined by those traditions of which the individual's life is a part, and this is true both of those goods which are internal to practices and of the goods of a single life." Alasdair MacIntyre, 222. A collective memory is thus a set ideas and arguments that provide and expand a source context for the defining goods of a tradition.

soteriology and the ontological status of man/woman and his/her relation to sin. This leads me

to the suggestion that the Imāmī tradition's discourse on sex is not simply a matter of law,

rights and duties and gender hierarchies, but fundamentally a soteriological and ontological

endeavor and hence a juristic program for the cultivation of the pious self.


## 1.2: THE SOTERIOLOGY OF THE METAPHYSICAL HEART IN THE IMĀMĪ SOURCE-TEXTS

For most of the Imāmī tradition, the quintessential goal of the normative Muslim in the

Qur'anic narrative (as understood by Muslim jurists) is the attainment of *al-qalb al-salīm* or

the soundness of the metaphysical heart.[81] On the wider scale of the Islamic discursive

tradition, there is no agreement (or normative position) as to what the full implications of a

sound metaphysical heart are, but it is the teleology of the Qur'anic narrative and the

normative aim of the Islamic discursive tradition as whole. The word *qalb* is mentioned in a

hundred and twenty-four verses in the Qur'an,[82] and the term "soundness of the heart" is

---

Even if the argument of a particular good is not agreed upon, it nevertheless provides a spring board from which one may establish a corrective whilst still being part of and appreciating that living tradition.

[81] The sense that the "heart" is metaphysical (and not material) in nature has historically been the dominant view in Imāmī Shīʿīsm. Muḥammad Bāqir al-Majlisī (d. 1111/1698) delineates various views on the nature of the *ʿaql* (or intellect) and leans towards viewing it as a metaphysical phenomenon (thereby categorizing the *qalb* metaphysically as well given how the *ʿaql* and *qalb* are part and parcel of each other) even if the *ʿaql* may manifest itself materially. See Muḥammad Bāqir b. Muḥammad Taqī al-Majlisī, *Mirāt al-ʿUqūl fī Sharḥ Akhbār al-Rasūl*, 26 vols., ed. Hāshim Rasūlī Maḥlātī (Tehran: Dār al-Kutub al-Islāmīyah, 1404/1983), I, 27-33. Mulla Sadra (d. 1050/1640) also shares the majoritarian view that the *ʿaql*, and by extension the *qalb*, is non-material and metaphysical in nature, see Muḥammad b. Ibrāhīm Ṣadr al-Dīn al-Shīrāzī (Mulla Sadra), *Sharḥ Uṣūl al-Kāfī*, 4 vols., ed. Muḥammad Khwājavī (Tehran: Muʾassasah-yi Muṭāliʿāt va Taḥqīqāt-i Farhangī, 1383 H.Sh/2004), I, 229. The modern jurist and Qurʾan commentator Nāṣir Makārim Shīrāzī also confirms the majoritarian Imāmī belief that the heart is metaphysical, see Nāṣir Makārim Shīrāzī, *Tafsīr-i Nimūnah*, 27 vols. (Tehran: Dār al-Kutub al-Islāmīyah, 1374 H.Sh/[1995-1996]), XV, 274.

[82] Q2:7; 2:10; 2:74; 2:88; 2:93; 2:97; 2:118; 2:204; 2:225; 2:260; 2:283; 3:7; 3:8; 3:103; 3:126; 3:151; 3:154; 3:156; 3:159; 3:167; 4:63; 4:155; 5:13; 5:41(2); 5:52; 5:113; 6:25; 6:43; 6:46; 7:100; 7:101; 7:179; 8:2; 8:10; 8:11; 8:12; 8:24; 8:49; 8:63 (2); 8:70; 9:8; 9:15; 9:45; 9:60; 9:64; 9:77; 9:87; 9:93; 9:110 (2); 9:117; 9:125; 9:127; 10:74; 10:88; 13:28 (2); 15:12; 16:22; 16:106; 16:108; 17:46; 18:14; 18:28; 18:57; 21:3; 22:32; 22:35; 22:46 (2); 22:53 (2); 22:54; 23:60; 23:63; 24:37; 24:50; 26:89; 26:194; 26:200; 28:10; 30:59; 33:4; 33:5; 33:10; 33:12; 33:26; 33:32; 33:51; 33:53 (2); 33:60; 34:23; 37:84; 39:22; 39:23; 39:45; 40:18; 40:35; 41:5; 42:24; 45:23; 47:16; 47:20; 47:24; 47:29; 48:4; 48:11; 48:12; 48:18; 48:26; 49:3; 49:7; 49:14; 50:33; 50:37; 57:16 (2); 57:27; 58:22; 59:2; :59:10; 59:14; 61:5; 63:3; 66:4; 64:11; 74:31; 79:8; 83:14.

mentioned twice. The *qalb*, in conjunction with its conceptual components,[83] is the cognitive,

ontological, epistemological and soteriological axis of human life and experience.[84] As the loci

of human experience, the *qalb* is the seat of understanding and spiritual blindness;[85] the arena

for spiritual diseases and evil;[86] the seat of divine revelation;[87] the point of true intentions;[88] the

---

[83] These include other essentially related key-terms in the Qur'an, such as the *ṣadr*, the human breast which seats the heart and it is often thought of as a treasure chest where one's inner secrets are stored; the *ʿaql*, its intellective and perceptive mechanism; the *fū'ād* - who in its literal sense refers to heat or fever (or alternatively, to 'kindle' or 'ignite') - signifies the emotional center of the heart; the *lubb* or 'kernel' is the inner most aspect of the heart, it is the only dimension of the heart that is pure from spiritual impurities. The *lubb* is the kernel and pure core of the heart; the *ʿaql* is believed to be the intellective point from which humans can perceive and experience the divine in a pure and unadulterated manner. The *lubb* is where the union between knowledge and being can be found. The concept of the *lubb* has striking parallels with the "deep heart" of Eastern Orthodox Christianity which is seen as the center of man's *hypostasis*. See for example Archimandrite Zacharias, *The Hidden Man of the Heart* (I Peter 3:4): *The Cultivation of the Heart in Orthodox Christian Anthropology*, ed. Christopher Veniamin (Dalton: Mount Thabor Publishing, 2014), 1. For a well-known Sufi treatise on the metaphysical heart, see Muḥammad b. ʿAlī Ḥakīm al-Tirmidhī, *Bayān al-farq bayn al-ṣadr wa al-qalb wa al-fu'ād wa al-lubb*, ed. Nicholas L. Heer (Cairo: Dār Iḥyā' al-Kutub al-ʿArabīyah, 1958). The above delineation of the heart's components is not singular in Islam but is certainly its most popular version and the one most commonly found in Imāmī Shīʿīsm.

[84] It must be stressed that although the *qalb*, as widely understood by the Imāmī tradition, is the source of the intellect and by extension human reason and rationality, the teleology of reason and the intellect (*ʿaql*) goes beyond the confines of a materialistic epistemology and physicalist uses. It is both a means for transcendental perception as well the point from which the fully virtuous life begins and ends. In his description of reason in the classical and "Christian" sense, David Bentley Hart writes that reason is "a whole way of life, not the simple and narrow mastery of certain techniques of material manipulation, and certainly not the childish certitude that such mastery proves that only material realities exist. A rational life is one that integrates knowledge into a larger choreography of virtue, imagination, patience, prudence, humility, and restraint. Reason is not only knowledge, but knowledge perfected in wisdom. In Christian tradition, reason was praised as a high and precious thing, principally because it belonged intrinsically to the dignity of beings created in the divine image; and, this being so, it was assumed that reason is also always morality, and that charity is required for any mind to be fully rational." David Bentley Hart, 236. This description was historically shared by much of the Islamic tradition (with few exceptions.) Al-Majlisī offers a near exhaustive study of the function of *ʿaql* (and thus human reason) in the Qur'an and the Imāmī corpus of ḥadīth. He concludes that it serves two main functions (of course, not excluding other functions which, among others, includes logical thinking and knowledge of self-evident truths, e.g., law of causality): 1) it is part and parcel of leading a virtuous and moral life (e.g. knowing the difference between good and bad, good and harm, restraint, prudence and patience) and 2) a means for understanding and grasping the divine. The Imāmī understanding of *ʿaql* is not normative and there have been historical differences (mostly minor) but al-Majlisī's summary has generally been uncontroversial and his assertions as to what the major functions of the *ʿaql* are have historically been accepted by most Imāmī theologians. See al-Majlisī, *Biḥār al-Anwār al-Jāmiʿah li-durar Akhbār al-A'immah al-Aṭhār*, 110 vols., ed. by a committee of researchers (Beirut: Dār Iḥyā' al-Turāth al-ʿArabī, 1403/1982), I, 99-105; *Mirāt al-ʿUqūl*, I, 25-33.

[85] See for example Q2:7; 2:74; 2:88; 4:155; 5:13; 6:25; 6:46; 7:100; 7:101; 7:179; 9:87; 9:93; 9:127; 83:14; 10:74; 16:108; 17:46; 18:28; 18:57; 21:3; 22:46; 23:63; 24:37; 30:59; 40:35; 41:5; 42:24; 45:23; 47:16; 47:24; 50:37; 57:16; 63:3.

[86] Q2:10; 5:52; 8:49; 9:125; 22:53; 24:50; 33:12; 33:32; 33:60; 47:29.

[87] Q2:97.

[88] Q2:204; 2:225; 3:167; 4:63; 8:70; 9:8; 9:64; 16:106; 33:5; 33:51; 47:29; 48:11; 48:18; 64:4.

platform in which sins occur;[89] the site where deviation from the truth occurs;[90] where the

individual is tested by God;[91] the source from which harshness comes from;[92] the loci of belief

and disbelief;[93] the seat of pride;[94] where piety and God consciousness takes place;[95] the place

of divine guidance;[96] the center of spiritual doubt;[97] the seat of hypocrisy;[98] the true place of

submission to God;[99] the domain of tranquility[100] and fear;[101] the seat of love, hate and anger;[102]

and the center and loci of compassion and mercy.[103] The heart is the soteriological and

ontological epicenter of the normative Muslim. It is the esoteric focal point from which the

pious self is fashioned from. The mechanics of salvation is perhaps best found in Q26:89:

> [Abraham said:] He is the one who created me (78) so He is the one who
> guides me. (79) He is the one who feeds me and gives me to drink and when I
> fall ill (81) He is the one who heals me. He is the one who will cause me to die
> and once more give me life (82) and it is He who, I hope, will forgive my
> faults on the Day of Judgment. (83) My Lord, grant me wisdom and make me
> one of the righteous (84) and grant me a good name among those who will
> come after me (85) and make me of those who shall inherit the Garden of
> Bliss! (86) Forgive my father for he is of those who went astray! (87) Do not
> disgrace me on the Day when all will be raised from the dead; the Day when
> neither wealth nor children will be of benefit or help; (88) *but the only one
> who will be saved is the one who comes to God with a pure heart.* (89)

This group of verses delineate the concept of Qur'anic salvation as both a worldly and after-

worldly process. The process of attaining a pure heart (*qalb salīm*) begins by acknowledging

God as the originator of being, creator of humanity and guide to building the virtuous self. As

---

[89] Q2:283.
[90] Q3:7; 3:8; 61:5.
[91] Q3:154; 49:3.
[92] Q3:159.
[93] Q5:41; 10:88; 15:12; 26:200; 39:22; 48:4; 49:7; 49:14; 57:16; 58:22.
[94] Q6:43; 16:22.
[95] Q8:2; 22:32; 22:35; 23:60; 49:3; 50:33; 50:37.
[96] Q8:24; 64:11.
[97] Q9:45; 9:110; 9:117.
[98] Q9:77; 74:31; 47:20.
[99] Q22:54.
[100] Q2:260; 3:126; 5:113; 8:10; 13:28; 39:23; 48:4; 48:18; 48:26.
[101] Q3:151; 8:12; 79:8; 33:10; 33:26; 34:23; 40:18; 59:2.
[102] Q2:93; 9:15; 39:45; 48:26; 49:7; 59:10.
[103] Q57:27.

the archetype of the ideal Muslim, Abraham expresses a vision of the divine where God is the

sole and absolute sustainer of all human life and experience both in this earthly life and the

next. Yet salvation that begins in this world and culminates in the afterlife is a reciprocal

process. The normative Muslim is to refrain from sins and with sincere humility seek

forgiveness for his/her sins. God then reciprocates by granting wisdom and righteousness. This

holistic process, as per the Qur'anic narrative, leads to a pure heart and brings about

soteriological success.

The corollaries and imports of the pure heart have been subject to much discussion by

Imāmī exegetes. Shaykh al-Ṭūsī (d. 460/1067) writes that the pure of heart is a heart that is

pure from moral corruption (*fasād*) and sins (*maʿāṣī*). A person who has a pure heart will also

have pure limbs, thus meaning that outward immorality and sins stem from a corrupt interior.

Al-Ṭūsī mentions another (slightly) alternative interpretation that a pure heart refers to one

who refrains from insisting on sin (*al-iṣrār ʿala al-dhanb*).[104] Al-Ṭabrisī[105] (d. 548/1153) gives

a brief exposé of the early Tābiʿī Qur'an commentators al-Ḥasan al-Baṣrī (d. 110/728) and

Mujāhid b. Jabr (d.104/722)[106] where the pure heart is understood as a heart that is empty of

idolatry (*shirk*) and spiritual and emotional doubt (*shakk*).[107] Although he does not reject this

view, he inclines towards al-Ṭūsī's view and quotes two ḥadīths to support this position. The

first is a report (originally recorded by himself) attributed to the sixth Shīʿī Imām Jaʿfar al-

---

[104] Muḥammad b. Ḥasan al-Ṭūsī, *al-Tibyān fī Tafsīr al-Qur'ān*, 10 vols., ed. Aḥmad Qaṣīr al-ʿĀmilī (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d), VIII, 34.

[105] Also known as as al-Ṭabarsī.

[106] An alternative death date is 100/718.

[107] Al-Faḍl b. al-Ḥasan al-Ṭabrisī, *Majmaʿ al-Bayān fī Tafsīr al-Qur'ān*, 10 vols., ed. Muḥammad Javād Balāghī (Tehran: Intishārāt-i Nāṣir-i Khusraw, 1372 H.Sh/1993), VII, 305. This position has also been attributed to Jaʿfar al-Ṣādiq in Imāmī sources, see Muḥammad b. Yaʿqūb b. Isḥāq al-Kulaynī, *al-Kāfī*, 15 vols., ed. Dār al-Ḥadīth/Mūsā Shubayrī Zanjānī (Qum: Dār al-Ḥadīth, 1429/2008), III, 46; it is also held (although not to the exclusion of other views) by the early Imāmī exegete ʿAlī b. Ibrāhīm al-Qummī (d. after 907/919), see *Tafsīr al-Qummī* (attrib), 2 vols., ed. Tayyib al-Mūsawī al-Jazāʾirī (Qum: Dār al-Kitāb, 1404/[1983-1984]), II, 122.

Ṣādiq (d. 148/765) stating that Q26:89 is a "heart that is pure from attachment[108] to the ephemeral world (*salima min ḥubb al-dunyā*)."[109] The second is a popular prophetic ḥadīth stating that "attachment to the ephemeral world is the root (lit. "head") of all sin (*ḥubb al-dunyā raʾs kull khaṭīʾah*)."[110]

Another complimentary report on Q26:89 attributed to the eighth Imām ʿAlī al-Riḍā (d. 203/818-819) states that one of the degrees of humility (*tawāḍuʿ*) is knowledge of one's true self-measure (i.e. one does not exalt himself/herself beyond what one really is) and thus sees oneself in relation to how he/she actually is – thus leading to the pure heart. With a pure heart

---

[108] *Ḥubb* literally means "love" but given the context of this genre of ḥadīths the word "attachment" is more appropriate in conveying its meaning.

[109] Ibid; the ḥadīth is popular with Imāmī exegetes of this verse, see for example Muḥammad Muḥsin b. Murtaḍā al-Kāshānī (al-Fayḍ al-Kāshānī), *Tafsīr al-Ṣāfī*, 5 vols., ed. Ḥusayn Aʿlamī (Tehran: Maktabat al-Ṣadr, 1415/1995), IV, 41; ʿAbd ʿAlī b. Jumʿah al-ʿArūsī al-Ḥuwayzī, *Tafsīr Nūr al-Thaqalayn,* 5 vols., ed. Hāshim Rasūlī Maḥlātī (Qum: Ismāʿīlīyān, 1415/1995), IV, 58; Muḥammad b. Muḥammad Riḍā al-Qummī al-Mashhadī, *Tafsīr Kanz al-Daqāʾiq wa Baḥr al-Gharāʾib*, 14 vols., ed. Ḥusayn Dargāhī (Tehran: Sāzmān-i Chāp va Intishārāt-i Vizārat-i Farhang va Irshād-i Islāmī, 1368 H.Sh/1989), IX, 486; Hāshim b. Sulaymān al-Baḥrānī, *al-Burhān fī Tafsīr al-Qurʾān*, 5 vols., ed. Muʾassasat al-Biʿthah (Qum: Muʾassasat al-Biʿthah, 1374 H.Sh/[1995-1996]), IV, 175; Fatḥ Allāh b. Shukr Allāh al-Kāshānī, *Zubdat al-Tafāsīr*, 7 vols., ed. Bunyād-i Maʿārif-i Islāmī (Qum: Bunyād-i Maʿārif-i Islāmī, 1423/2002), V, 33; Muḥammad Ḥusayn al-Ṭabāṭabāʾī, *al-Mīzān fī Tafsīr al-Qurʾān*, 20 vols. (Qum: Daftar-i Intishārāt-i Islāmī-i Jāmiʿah-yi Mudarrisīn-i Ḥawzah-yi ʿIlmīyah-yi Qum, 1417/1996-1997]), XV, 293; Nāṣir Makārim Shīrāzī, op. cit., XV, 274; Jaʿfar al-Subḥānī, *Mafāhīm al-Qurʾān*, 10 vols. (Qum: Muʾassasat al-Imām al-Ṣādiq, 1421/[2000-2001]), VIII, 353; Muḥammad Ḥusayn Faḍl Allāh, *Tafsīr Min Waḥī al-Qurʾān*, 24 vols. (Beirut: Dār al-Malāk lil-Ṭabāʿah wa al-Nashr, 1419/[1998-1999]), XVII, 129.

[110] Ibid; see also the following early Imāmī sources for this maxim and its alternative attributions: al-Kulaynī, II, 339; III, 771; Jaʿfar b. Muḥammad al-Ṣādiq, *Miṣbāḥ al-Sharīʿah* (attrib.) (Beirut: Aʿlamī, 1400/1980), 138; Muḥammad b. ʿAlī b. Bābūyah al-Ṣadūq (al-Shaykh al-Ṣadūq), *al-Khiṣāl*, 2 vols., ed. ʿAlī Akbar Ghaffārī (Qum: Jāmiʿ-yi Mudarrisīn , 1362 H.Sh/1983), I, 25; Muḥammad b. ʿAlī al-Karājakī, *Kanz al-Fawāʾid*, 2 vols., ed. ʿAbd Allāh Niʿmah (Qum: Dār al-Dhakhāʾir, 1410/1989), I, 217; Muḥammad b. Aḥmad al-Fattāl al-Nishābūrī, *Rawḍah al-Wāʿiẓīn*, 2 vols. (Qum: Intishārāt-i Raḍī, 1375 H.Sh/1996), II, 441; ʿAlī b. Muḥammad al-Wāsiṭī al-Laythī, *ʿUyūn al-Ḥikam wa al-Mawāʿiẓ*, ed. Ḥusayn Bīrjandī (Qum: Dār al-Ḥadīth, 1376 H.Sh/[1997-1998]), 231; ʿAbd al-Wāḥid al-Tamīmī al-Āmidī, *Ghurar al-Ḥikam wa Durar al-Kalim*, ed. Mahdī Rajāʾī (Qum: Dār al-Kitāb al-Islāmī, 1410/[1989-1990]), 348; al-Ṭabrisī, *Mishkāt al-Anwār fī Ghurar al-Akhbār* (Najaf: al-Maktabat al-Ḥaydarīyah, 1385-1965), 267; see also the Muʿtazilite ʿAbd al-Ḥamīd b. Hibat Allāh Ibn Abī al-Ḥadīd (d. 655 or 656/1257 or 1258), *Sharḥ Nahj al-Balāghah*, 10 vols., ed. Muḥammad Abū al-Faḍl Ibrāhīm (Qum: Maktabat Āyat Allāh al-Marʿashī al-Najafī, 1404/1983), VI, 233. Al-Ṭabrisī's application of this ḥadīth to Q26:89 gained wide acceptance in the Imāmī exegetical tradition, see for example al-Ḥuwayzī, IV, 58; al-Baḥrānī, op. cit., IV, 175; al-Qummī al-Mashhadī, IX, 486; al-Ṭabāṭabāʾī, XV, 293; Muḥammad b. Ḥabīb Allāh al-Sabzawārī al-Najafī, *al-Jadīd fī Tafsīr al-Qurʾān al-Majīd*, 7 vols. (Beirut: Dār al-Taʿāruf lil-Matbūʿāt, 1407/[1986-1987]), V, 192; Makārim Shīrāzī, op. cit., XV, 274; Mīr Sayyid ʿAlī Ḥāʾirī Tihrānī, *Muqtanīyāt al-Durar*, 12 vols. (Tehran: Dār al-Kutub al-Islāmīyah, 1377 H.Sh/[1998-1999]), VIII, 57; Muḥammad al-Ṣādiqī al-Tihrānī, *al-Furqān fī Tafsīr al-Qurʾān bi al-Qurʾān*, 30 vols. (Qum: Intishārāt-i Farhang-i Islāmī, 1365 H.Sh/1986), XXII, 65; Muḥammad Taqī al-Mudarrisī, *Min Hudā al-Qurʾān*, 18 vols. (Tehran: Dār Maḥabbā al-Ḥusayn, 1419/[1998-1999]), IX, 73.

and a humble self - al-Riḍā states - "one dislikes to do unto others what he/she dislikes for himself/herself; restrains his/her anger; is forgiving of people and *thus God loves those who perform beautiful deeds*[111] (Q3:134)."[112]

Modern Imāmī discussions have by and large reflected and rehashed premodern positions. Muḥammad Ḥusayn Faḍl Allāh (d. 2010) (with a modernist take) writes that it is in the pure heart that a human's true value is made distinct. The pure heart is a heart of good works and a heart that is pure from knowingly rejecting divine truth (*kufr*), antagonism towards it (*ʿadāwah*) and evil against God's servants (and creation).[113] Muḥammad Ḥusayn Ṭabāṭabāʾī (d. 1981) concludes that Q26:89 is holistic in meaning in so far as it is in reference to a heart that is pure from all forms of spiritual pollutants, which among other things include idolatry, spiritual doubt, moral vice and sin, oppression and deviant beliefs.[114] Nāṣir Makārim Shīrāzī summarizes the above arguments into one concept: God consciousness and piety (*taqwā*). God consciousness for Shīrāzī is an all-encompassing term that summarizes all of the above views. As such, *taqwā* is the fundamental condition for *al-qalb al-salīm* and hence the culmination and ultimate goal of Islamic technologies of the self. Shīrāzī concludes that a pure heart - as per the ḥadīth attributed to Jaʿfar al-Ṣādiq – is a heart that at its moment of encountering God (on the Day of Judgment) is empty of anything else but him.[115]

---

[111] Or *thus God loves the virtuous*.
[112] Al-Kulaynī, III, 321-322. For its exegetical use by Imāmī commentators, see for example see al-Ḥuwayzī, IV, 58; al-Ṣādiqī al-Tihrānī,, XXII, 104.
[113] Faḍl Allāh, op. cit., XVII, 129-130.
[114] See his discussion in al-Ṭabāṭabāʾī', XV, 288-294.
[115] Makārim Shīrāzī, op. cit., XV, 273-275. For the ḥadīth in its original source see al-Kulaynī, III, 46 but a different segment of the ḥadīth is cut out and emphasized on in this case); for its exegetical use for Q26:89 see for example al-Fayḍ al-Kashānī, op. cit., IV, 41; al-Qummī al-Mashhadī, IX, 486; ʿAbd Allāh b. Muḥammad Riḍā Āl Shubar, *al-Jawhar al-Thamīn fī Tafsīr al-Kitāb al-Mubīn*, 6 vols. (Kuwait: Maktabat al-Alfayn, 1407/[1986-1987], IV, 391; Faḍl Allāh, op. cit., XVII, 129.

## 1.3: THE SOTERIOLOGY OF ZINĀ AND THE CORRUPTION OF THE METAPHYSICAL HEART IN IMĀMĪ SOURCE-TEXTS

In a renowned ḥadīth attributed to the Prophet Muhammad in both Imāmī and Sunnī sources,

he is reported to have said that

> The permissible is clear (ḥalāl) and the forbidden vices (ḥarām) clear and between them are [moral] issues fraught with [real and serious] doubt (mushtabihāt) that most people are ignorant of. Whoever is conscious and wary of these dubious matters has absolved his honor and way of life (dīn) from blame; but whoever indulges in them is [as if] he indulged in forbidden vices: for it is like a shepherd who grazes his sheep near a sanctuary only for them to eventually eat within it. Every king has a forbidden sanctuary and the forbidden sanctuary of God are the vices he has forbidden. Surely in the body there is a piece of flesh that if upright, the whole body will be upright but if it is corrupted, the whole body will be corrupted. Indeed, this piece of flesh is [none other than] the heart.[116]

The heart is the ontological axis and the central crux of salvation in human life. Seyyed

Hossein Nasr states that the heart "is the center of the human microcosm, at once the center of

the physical body, the vital energies, the emotions, and the soul, as well as the meeting place

between the human and the celestial realms where the spirit resides."[117] For most of the

discursive tradition of Islam, the heart defines the totality of an individual's *being* thereby

shaping all of human experience and the grounds through which piety and virtue is

ontologically achieved. Although for much of the Imāmī tradition the heart represents the

immaterial and metaphysical mind, it is also causally related to one's material being. There is a

---

[116] The ḥadīth is originally found in Sunnī (or proto-Sunnī) sources but it was - like many other traditions of potential value - later adopted and accepted within the mainstream Imāmī tradition. For one of its main sources in Sunnī sources, see for example Muḥammad b. Ismāʾil al-Bukhārī al-Juʿfī, *Saḥīḥ al-Bukhārī*, 7 vols., ed. Muṣṭafā Dīb al-Bughā (Damascus and Beirut: Dār ibn Kathīr), I, 29. For its adoption in Imāmī works, see for example al-Fattāl al-Nishābūrī, II, 414; Warrām b. Abī Fāris, *Majmūʿat Warrām*, 2 vols. (Qum: Maktabah-yi Faqīh, 1410/[1989/1990]), II, 267; Muḥammad b. Zayn al-Dīn b. Abī Jumhūr, *ʿAwālī al-Laʾālī al-ʿAzīzīyah fī al-Aḥādīth al-Dīnīyah*, 4 vols., Mujtabā ʿIrāqī (Qum: Dār Sayyid al-Shuhadāʾ lil-Nashr, 1405/[1984-1985]), IV, 7; Zayn al-Dīn ibn ʿAlī al-ʿĀmilī (al-Shahīd al-Thānī), *Munyat al-Murīd fī Ādāb al-Mufīd wa al-Mustafīd*, ed. Riḍā Mukhtārī (Qum: Maktabat al-ʿIlām al-Islāmī, 1409/[1988-1989]), 224; al-Majlisī, *Biḥār al-Anwār*, LVIII, 23; Abū al-Qāsim Pāyandah, *Nahj al-Faṣāḥah* (Tehran: Dunyā-yi Dānish, [2003-2004]), 245, 328, 451. The usage of "piece of flesh" would be understood as a metaphor by most Imāmīs, see fn. 81.

[117] Seyyed Hossein Nasr, "The Heart of the Faithful is the Throne of the All-Merciful," in *Paths to the Heart: Sufism and The Christian East*, ed. James S. Cutsinger (Bloomington: World Wisdom, Inc., 2002), 32.

direct interactionism between the experiences of the body and the state of the *qalb*. A prior

corruption in the heart may incline the body to engage in unvirtuous behavior through which

the *intended* behavior would further pollute the heart. Consistent corruption of the heart

through reprehensible intentions and acts severs the heart's ontological and cognitive

relationship with the divine and may lead to damnation.[118] A virtuous disposition and the

heart's bond with God in *īmān* on the other hand are necessary conditions for *al-qalb al-salīm*

which - at its proper degree - may lead to a beatific vision of God (*shuhūd*) in this world. In a

widely accepted ḥadīth by the Imāmī tradition, it is reported that the Shīʿī saint Abū Baṣīr[119]

(d. 149-150/766-767) once asked al-Ṣādiq if God's trusting faithful (*muʾminīn*) would see him

on the Day of Resurrection to which he replied, "do you not see him at this very moment?"

(*ʾalasta tarāhu fī waqtika hadhā?*)[120] The pure metaphysical heart is thus a state of interior

silence that is in direct communication with and vision of God, it is the end-product of the

human project of self-fashioning.

<div align="center">***</div>

*Zinā* is normatively understood as one of the primary corrupters of the heart. In the realm of

sexual sins, it is the most dangerous of all. How zinā is defined is not without its controversies.

---

[118] I have deliberately left out a discussion on notions of correct belief and salvation in Imāmī Shīʿīsm as the weight of controversies among Imāmī scholars are simply too large to be covered here and would require an entire volume on its own. As this volume is about law and salvation, a comprehensive discussion regarding doctrinal orthodoxy may not be pertinent to the overall goals of this study.

[119] His full name is Abū Muḥammad Yaḥyā b. Abī al-Qāsim al-Asadī.

[120] See al-Ṣadūq, *al-Tawḥīd*, ed. Hāshim Ḥusaynī (Qum: Jāmiʿyi Mudarrisīn, 1398/[1977-1978]), 117. The heart is also described as the seat of the all-Merciful (*ʿarsh al-Raḥmān*), see al-Majlisī, *Biḥār al-Anwār*, LV, 39. Mohammad Ali Amir-Moezzi has understood this tradition as meaning that al-Ṣādiq was God incarnate, but this is not consistent with how Imāmīs historically understood the tradition, namely that the tradition refers to a person seeing God through the eye of the heart (*ʿayn al-qalb*) and the reality of one's internal faith (*ḥaqīqat al-qalb*).

In her work on sex and gender in Ottoman Aleppo,[121] Elyse Semerdjian regularly translates

zinā as "illicit sexual intercourse" which encompasses opposite and same-sex relationships.[122]

The statement is problematic on several grounds. Zinā is a specific legal term that refers to the

insertion of a man's penis or at the very least, the glans (ḥashafah) into the vagina of a woman

whom is neither his wife or concubine. Muslim legal sources are often more specific than this.

In order for such a penetration be categorized as zinā, some Imāmī sources also state that the

perpetrators must be mature (bāligh), sane (ʿāqil), aware of its prohibition and perform the act

out of free will (mukhtār).[123] There are other forms of intercourse that are illicit but not

categorized as zinā. Fellatio and other non-penetrative forms of intercourse do not fall under its

---

[121] Elyse Semerdjian, *"Off the Straight Path": Illicit Sex, Law and Community in Ottoman Aleppo* (Syracuse: Syracuse University Press, 2008).

[122] Ibid., 6.

[123] See for example Muḥammad b. Makkī al-ʿĀmilī (al-Shahīd al-Awwal), *al-Lumʿah al-Dimashqīyah fī Fiqh al-Imāmīyah*, ed. Muḥammad Taqī Murwārīd and ʿAlī Asghar Murwārīd (Beirut: Dār al-Turāth/al-Dār al-Islāmiyah, 1410/1989), 253; al-Shahīd al-Thānī, *Rawḍah al-Bahīyah fī Sharḥ al-Lumʿah al-Dimashqīyah*, 10 vols., ed. Muḥammad Kalantar (Qum: Kitābfurūshī-i Dāvarī, 1410/1989), IX, 14-15; *Masālik al-Ifhām ilā Tanqīḥ Sharāʾiʿ al-Islām*, 15 vols., ed. Gurūh-i Pazhūhish-i Muʾassasah-yi Maʿārif-i Islāmī (Qum: Muʾassasat al-Maʿārif al-Islāmīyah, 1413/[1992-1993]), XIV, 328; Muḥammad Taqī al-Shushtarī, *al-Nujʿah fī Sharḥ al-Lumʿah*, 11 vols. (Tehran: Kitābfurūshī-yi Ṣadūq, 1406/1986), XI, 3. Most Imāmī jurists have accepted the admissibility of legally incompetent agents (due to insanity, minor status etc.) in the category of zinā . Although the actions of one who is legally incompetent (ghayr al-mukallaf) is still considered zinā, legal punishments (ḥudūd) are not applicable for the majority of jurist with the exception of a minority of early scholars. See a summary of early Imāmī arguments on insanity and zinā (non-applicability of ḥudūd) in Jāʿfar b. al-Ḥasan al-Ḥillī (al-Muḥaqqiq al-Ḥillī), *Iḍāḥ al-Fawāʾid fī Sharḥ Mushkilāt al-Qawāʿid*, 4 vols., ed. Ḥusayn Mūsavī Kirmānī, ʿAlī Panāh Ishtihārdī and ʿAbd al-Raḥīm Burujirdī (Qum: Muʾassasah-yi Ismāʿīlīyān, 1387 H.Sh/2008), IV, 471. For later jurists on the non-applicability of punishments for incompetent agents, see al-Ḥillī (al-Muḥaqqiq al-Ḥillī), *Sharāʾiʿ al-Islām fī Masāʾil al-Ḥalāl wa al-Ḥarām*, 4 vols., ed. ʿAbd al-Ḥusayn Muḥammad ʿAlī (Qum: Muʾassasah-yi Ismāʿīlīyān, 1408/1988), IV, 136; *Mukhtaṣar al-Nāfiʿ fī Fiqh al-Imāmīyah*, 2 vols. (Qum: Muʾassasat al-Maṭbūʿāt al-Dīnīyah, 1418/1997), I, 213; Ḥasan b. Abī Ṭālib Fāḍil al-Ābī, *Kashf al-Rumūz fī Sharḥ Mukhtaṣar al-Nāfi*, 2 vols., ed. ʿAlī Panāh Ishtihārdī and Āqā Ḥusayn Yazdī (Qum: Daftar-i Intishārāt-i Islāmī, 1417/1997), II, 538; Miqdād b. ʿAbd Allāh al-Suyūrī, *al-Tanqīḥ al-Rāʾiʿ li-Mukhtaṣar al-Sharāʾiʿ*, 4 vols., ed. ʿAbd al-Laṭīf Ḥusaynī (Qum: Kitābkhānah-yi Āyāt Allāh Marʿashī Najafī, 1404/1983), IV, 328; ʿAlī b. ʿAlī b. Muḥammad b. Ṭayy al-Faqʿānī, *al-Durr al-Manḍud*, ed. Muḥammad Barakat (Qum: Maktabah Imām al-ʿAṣr al-ʿIlmīyah, 1418/1997), 293; al-Fayḍ al-Kāshānī, *Mafātīh al-Sharāʾi*, 3 vols. (Qum: Kitābkhānah-yi Āyāt Allāh Marʿashī Najafī, n.d), II, 64. For modern jurists who have adopted this view, see for example Muḥsin al-Ṭabāṭabāʾī al-Ḥakīm, *Mustamsak al-ʿUrwat al-Wuthqā*, 14 vols. (Qum: Muʾassasat Dār al-Tafsīr, 1416/[1995-1996]), XIV, 225; Abū al-Qāsim al-Khūʾī, *Takmilat al-Minhāj* (Qum: Madīnat al-ʿIlm, 1410/1989), 32; Jawād b. ʿAlī al-Tabrīzī, *Asās al-Ḥudūd wa al-Taʿzīrāt* (Qum: Daftar-i Muʾalif, 1417/[1996-1997]), 15; Ḥusayn ʿAlī al-Muntaẓirī, *Kitāb al-Ḥudūd* (Qum: Intishārāt-i Dār al-Fikr, n.d), 6; Ḥusayn al-Waḥīd al-Khurāsānī, *Minhāj al-Ṣāliḥīn*, 3 vols. (Qum: Madrasah-yi Imām-i Bāqir, 1428/2007), III, 476; Muḥammad Isḥāq al-Fayyāḍ al-Kābulī, *Minhāj al-Ṣāliḥīn*, 3 vols. (n.p, n.d), III, 279.

legal rubric. Furthermore, the categorization of same-sex penetrative intercourse as zinā is controversial among the schools of law.[124] Mainstream Imāmī law for instance does not classify same-sex male intercourse under zinā but deems it legally distinct under the category of *liwāṭ* (sodomy).[125]

In its anthropology of sin, the prohibition of *zinā* - as a normative principle of Islam and Islamic law - forms one of the central tenets of the Sharīʿah's teleology for Muslim jurists. Zinā is not simply a legal problem, but for the Qur'anic *weltanschauung* as the jurists understand it, and thus the discursive tradition of Islam, it is a profoundly ontological one. The Qur'an warns the faithful not to approach zinā as it "is a vile deed (*fāḥishatan*) and an evil path (*sāʾa sabīlan*)."[126] The verse forms the main platform for most Muslim exegetical discussions on zinā. Among the Imāmīs, al-Ṭūsī briefly explains that the prohibition of zinā (in so far as life in this world is concerned) is to protect a child's right of inheritance (*ḥaqq al-walad*) and prevent the corruption of lineages (*fasād al-ansāb*).[127] By this, al-Ṭūsī expresses his concern that without a proper mechanism for the transference of wealth and clear parental lineages, the believing community would not be able to sustain itself as it would lead to financial and reproductive anarchy. The believing community also plays a crucial role in so far as it acts as cradle for *imān* to be nurtured and sustained in and ultimately ensuring the existence of the next pious generation of believers. Without the material wellbeing and harmony of the

---

[124] See Khaled el-Roueyheb's excellent study of views on same-sex relationships in the premodern Arab-Islamic world: Khaled el-Roueyheb, *Before Homosexuality in the Arab-Islamic World*, *1500-1800* (Chicago: University of Chicago Press, 2009).

[125] On the Imāmī distinction between *liwāṭ* and zinā, see al-Shahīd al-Thānī, *Rawḍah al-Bahīyah*, IX, 17. al-Muntaẓirī (d. 2009) writes that the juristic perception that *liwāṭ* is more sinful than zinā is unanimous (*ijmāʾ*) both among Imāmīs and Sunnīs, see al-Muntaẓirī, 144; see also ʿAbd al-Raḥmān al-Jazīrī and Muḥammad Yāsir Māziḥ, *al-Fiqh ʿalā al-Madhhab al-Arbaʿah wa Madhhab Ahl al-Bayt Waqfan li-Madhhab Ahl al-Bayt*, 5 vols. (Beirut: Dār al-Thaqalayn, 1419/[1998-1999]), IV, 206.

[126] Q17:31

[127] al-Ṭusī, op. cit., VI, 475.

community, nurturing *īmān* becomes an arduous, if not an almost impossible task in some

cases. Under Q25:68-70, al-Ṭūsī states that zinā (based on Q25:70) is not an unforgivable sin.

He acknowledges that the central crisis of zinā – which is even more important than the

worldly damage zinā causes - is the perpetrator's status as a sinner (and thus the corruption of

his/her heart).[128] Similarly, al-Ṭabrisī writes about zinā's material effects on individuals and

the community, but natural to his exegetical method, he cites ḥadīths to express the central

concerns of the verse. Using his own chain of transmission, al-Ṭabrisī cites a report attributed

to the Prophet stating that:

> Zinā gives rise to three qualities in this world and three qualities in the next. In
> regards to the former, it removes [divine] light from one's face (*yadhhabu bi-
> nūr al-wajh*,) cuts off worldly and spiritual sustenance (*rizq*) and leads to
> [individual and communal] self-destruction (*fanāʾ*.)  As for the latter, it brings
> about the anger of the Lord, a bad record of deeds (*sūʾ al-ḥisāb*) and entrance
> or dwelling in the hellfire.[129]

The ḥadīth is suggestive in two ways. The concern for self-destruction is a corollary of a larger

theme of reproducing sinful states (or *tendencies* towards sinful states) in the Imāmī tradition.

Sara Ahmed speaks of "social inheritance" as a bodily and historical phenomenon in which

"we inherit what we receive as the condition of our arrival into the world, as an arrival that

leaves and makes an impression."[130] The *passing* of history is thus a "social as well as a

material way of organizing the world that shapes the materials out of which life is made as well

as the very "matter" of bodies."[131] In the Imāmī tradition, sins are rarely isolated but are part of

a social web of contagion in which children are often the most vulnerable.  One's status as a

sinner participates in a web of social inheritance that shapes the material out of which children

---

[128] Ibid., VIII, 509.

[129] al-Ṭabrisī, *Majma' al-Bayān*, VI, 638. After delineating some of the material effects of zinā, the modern exegete Makārim Shīrāzī also concludes by quoting this ḥadīth in order to demonstrate its inward and after-worldly consequences, see Makārim Shīrāzī, op. cit., XII, 105.

[130] Sara Ahmed, *Queer Phenomenology: Orientations, Objects, Others* (Durham: Duke University Press, 2006), 125.

[131] Ibid.

are born from and inherit upon their arrival in this world. If the Qur'an states that no one shall bear the burden of another's sin, that is only in the afterlife in so far as individuals will not be responsible for the sins of others. In this world, Imāmī jurists acknowledge that people may and are born in an infected web of sin[132] and they may even be responsible for them if they do not rectify their state whilst being knowingly able to. An individual's position as a sinner thus presents a two-fold problem, one that is subjective and one that is communal through contagion. The self is not isolated to individuals, but is transmitted through reproduction and contagion.

As stated earlier, zinā in the Imāmī tradition is ultimately an ontological problem. The removal of "light" from a believer's face is suggestive of an ontological change that begins in the metaphysical heart. In fact, the removal of divine "light" from a believer's face is often associated with the "death" of the *qalb*.[133] Zinā, in a widely transmitted Prophetic report in both Imāmī and Sunnī sources states that "one who commits zinā does not do zinā while he [or she] is a believer"[134] In another report, it is stated that the "spirit of faith (or the ontological bond with God) is expelled" (*kharaja minhu ruḥ al-īmān*) from the one who commits zinā[135] which is expressed in the corruption of the *qalb*. The spiritual effects of zinā are also inherited

---

[132] As it will be seen in the next chapter, Imāmī jurists are adamant that people must select faithful spouses as their spiritual and moral states inevitably influences their offspring.

[133] See the famous ḥadīth of "laughing too much" in Aḥmad b. Muḥammad b. Khālid al-Barqī, *Kitāb al-Maḥāsin*, 2 vols., ed. Jalāl al-Dīn Muḥaddith (Qum: Dār al-Kutub al-Islāmīyah, 1371/[1953]), I, 106; al-Ṣadūq, *Man Lā Yaḥḍuruhu al-Faqīh*, III, 573; *al-Khiṣāl*, III, 573 and 526; *Maʿānī al-Akhbār*, ed. ʿAlī Akbar Ghaffārī (Qum: Daftar-i Intishārāt-i Islāmī, 1403/1983), 335; al-Ṭūsī, *al-ʾAmālī*, ed. Muʾassasat al-Biʿthah (Qum: Dār al-Thaqāfahh, 1414/1993), 541; al-Ṭabrisī, *Makārim al-Akhlāq* (Qum: al-Sharīf al-Rāḍī, 1412/[1991-1992]), 473; Abī Fāris, II, 68; Ḥasan b. Muḥammad al-Dulaymī, *Irshād al-Qulūb ilā al-Ṣawāb*, 2 vols. (Qum: al-Sharīf al-Rāḍī, 1412/[1991-1992]), I, 140; *ʾAlām al-Dīn fī Ṣifāt al-Muʾminīn*, ed. Muʿassasat Āl al-Bayt (Qum: Muʿassasat Āl al-Bayt, 1408/1988), 206; Ibn Abī Jumhūr, I, 94.

[134] See al-Bukhārī, VII, 2487; al-Kulaynī, IX, 675; al-Ṣadūq, *Man Lā Yaḥḍuruhu al-Faqīh*, IV, 22; *al-Khiṣāl*, II, 608; *ʾUyūn Akhbār al-Riḍā*, II, 125; al-Ṭūsī, *Tahdhīb al-Aḥkām*, 10 vols., ed. Muḥammad al-Mūsawī Khirsān (Tehran: Dār al-Kutub al-Islāmīyah, 1407/[1986-1987]), VI, 371; Abī Fāris, II, 267; Ibn Abī Jumhūr, I, 40 and 167.

[135] al-Ṣadūq, *Man Lā Yaḥḍuruhu al-Faqīh*, IV, 22.

by the hearts of children. Al-Sharīf al-Murtaḍā (d. 436/1044) for example, states that a person born out of zinā (*walad al-zinā*) will never reach the higher stages of *īmān*. Quoting a tradition from Ibn ʿAbbās (d. 68/687), he writes that this happens because in the process of conceiving a child through zinā, the parents are partners with Satan.[136] The production of sin, coupled with Satanic influence, becomes a corrupter of one's ontological state and the ontological state of the next generation.[137]

Reza Shah-Kazemi observes that the "greatest of all sins is identified by the Sufis [and Imāmīs] not in moral but in ontological terms: it is the sin of one's own separative existence [from God]" and hence why the [Imāmī] al-Fayḍ al-Kashānī (d. 1091/1680) stated that "those sins are constituted by their existence, and this is the most despicable of the qualities of their souls, which manifest through actions in the station of effacement"[138] At least in so far as the Imāmīs are concerned, the ultimate effect of sin manifests itself ontologically. As such, zinā is not just a moral problem, but primarily an ontological one given that the exodus of one's ontological bond with God from the heart is, in reality, the formation of a separative existence from God *as a state of the mind*. For Imāmīs, such a way of existence defeats the teleology of human creation and sets the platform for the death of the heart and the heart of the next generation. Imāmī concerns for the material effects of zinā - although important in their own right - are nevertheless secondary and for some, completely inconsequential.[139] If marriage is

---

[136] ʿAlī b. al-Ḥusayn al-Sharīf al-Murtaḍā, *Rasāʾil al-Sharīf al-Murtaḍā*, 4 vols., ed. Mahdī Rajāʾī (Qum: Dār al-Qurʾān al-Karīm, 1405/[1984-1985]), I, 399. Similarly, in a Prophetic tradition that al-Murtaḍā quotes, a person who knowingly hates ʿAlī is a sign that he/she was born out of zinā, see ibid. This discussion is obviously more complex than this for it opens the problem of human free will, see ibid., 399-401 for al-Murtaḍā's dealing with the question.

[137] See chapter two for a discussion on sexual vice and demonic possession.

[138] Reza Shah-Kazemi, "The Metaphysics of Interfaith Dialogue," in *Paths to the Heart: Sufism and The Christian East*, ed. James S. Cutsinger (Bloomington: World Wisdom, Inc., 2002), 147.

[139] ʿAllāmah al-Ḥillī dismisses some of the material concerns of zina like the "mixing of lineages" (*ikhtilāṭ al-ansāb*) by writing that a person who commits zinā gives no lineage to begin with (*lā nasab lil-zānī*.) See Ḥasan b.

to prevent zinā (as it will be seen later), then its purpose is to protect the ontological bond of the community with God and not necessarily preserve gendered hierarchal relations.

Ahmed observes that bodies are shaped through their movements in space and time. In their movements, bodies direct themselves towards or away from objects. For Ahmed, the body's trajectory is rooted in its social relations. An orientation is what fixes a subject in this world and grounds the range of possibilities in terms of what objects are or are not within reach. Disorientation alters these relations and reroutes a subject's trajectory and thereby rearranges the range of possible objects available to it. Ahmed suggests that disorientation can be both positive or negative.[140] As zinā shapes the worldly and religious ill-breeding of children (*tark tarbīyat al-atfāl*,)[141] and break's one's ontological bond with God, zinā disrupts, reorders and disorients the heart from its ultimate object, namely the Qur'anic "Straight Path to God" (*al-ṣirāt al-mustaqīm.*)

## 1.4: COMMADING THE GOOD AND FORBIDDING EVIL

Human lust and the propensity for zinā is the bane of the Sharīʿa's moral project for the Muslim subject. As one of the most corrupting manifestations of sin, Muslim jurists have given it disproportionate attention. There is perhaps no salvific mechanism in the law as closely associated to fighting sin, and particularly zinā, as the doctrine of Commanding the Good and

---

Yusūf b. Muṭṭahar al-Ḥillī, *Mukhtalaf al-Shīʿah fī Aḥkām al-Sharīʿah*, 9 vols., Guruh-i Pazhūhishī-i Daftar-i Intishārāt-i Islāmī (Qum: Daftar-i Intishārāt-i Islāmī, 1413/1993), VII, 75.

[140] For instance, queerness may alter particular trajectories and thus open up a new range of possibilities for itself, but disorientation affected by racism can also diminish capacities for action, see Ahmed, 111.

[141] See the statement in al-Ṣaduq, *Man Lā Yaḥḍuruhu al-Faqīh*, 4 vols., ed. ʿAlī Akbar Ghaffārī (Qum: Daftar-i Intishārāt-i Islāmī, 1413/1993), III, 565; *ʿUyūn Akhbār al-Riḍā*, 2 vols., ed. Mahdī Lājurdī (Tehran: Nashr-i Jahān, 1378/1958), II, 92; *ʿIlal al-Sharāʾiʿ*, 2 vols. (Qum: Kitābfurūshī-i Dāvarī, 1385 H.Sh/1966), II, 479; Muḥammad b. ʿAlī b. Shahr-Āshūb al-Māzandarānī, *Manāqib Āl Abī Ṭālib*, 4 vols. (Qum: ʿAllāmah, 1379/[1959-1960]), IV, 358. See its exegetical use in al-Ḥuwayzī, III, 161; al-Qummī al-Mashhadī, VII, 400; al-Ṣādiqī al-Tihrānī, XVII, 180; Husayn Ansārīyān, *Tafsīr-i Ḥakīm*, 9 vols. (Qum: Dār al-ʿIrfān, n.d), VIII, 79.

Forbidding Evil (*al-amr bi al-maʿrūf wa nahī ʿan al-munkar*) has been for the Imāmī

discursive tradition. In this section of chapter one, I will outline the general relationship

between the theological doctrine of Commanding the Good and Forbidding Evil and the

salvation of the of the metaphysical heart. It is this theological doctrine that frames and guides

its corollary principles in the law.

Commanding the Good and Forbidding Evil can be performed in multiple ways. It is a

normative mechanism in Islam that seeks to promote the fashioning of piety and virtuous

actions (e.g. prayers, fasting) and forbid evil and wrongdoing (e.g. zinā, theft, killing). Imāmī

jurists generally saw both commands as really one inseparable command, thus being one single

doctrine. The ways of applying the doctrine in a community of believers is variegated. It can

range from simply disdaining a wrongful act within a person's heart, spending money to

promote a virtue or preventing a vice, or scolding someone for a particular sin. Sometimes the

use of violence is legitimate; however, the act of killing (*qatl*) is considered impermissible by

most of the Imāmī tradition unless explicit permission is given by an infallible Imām.[142]  As

God has imposed this obligation, akin to other activities like prayer, Imāmī jurists deemed it

impermissible to take money or a salary for it.[143]

My interest in discussing Commanding the Good and Forbidding Evil is by no means

an exhaustive study of the subject, whether it is from an exegetical, historical or even legal

perspective – at least in so far as its legal technicalities are involved. A work of that nature

would require a separate study of its own. Michael Cook has already taken a large step in

---

[142] Muḥammad Ḥasan b. Bāqir al-Najafī, *Jawāhir al-Kalām fī Sharḥ Sharā'iʿ al-Islām*, 43 vols., ed. ʿAbbās Quchānī and ʿAlī Ākhundī (Beirut: Dār Iḥyā' al-Turāth al-ʿArabī, n.d), XXI, 383.

[143] Ibid., XXII, 116. This view has been challenged since the emergence of the Islamic Republic of Iran which sees itself as duty-bound to establish the principle of Commanding the Good and Forbidding Evil. As a government program, it is in need of hiring full-time staff to fight what it considers public and private vices.

contributing to this task in his magnum opus[144] which I will not repeat here. My task here is to

demonstrate the doctrine's fundamental importance to the notion of salvation in Imāmī

discourse and how, as a salvific doctrine, it also informs the legal tradition of Imāmism. For

this reason, I have purposefully avoided outlining the legal technicalities that are not directly

relevant to the discussion. The purpose of this section is to outline the *soteriology* of the

doctrine and its relationship to the ontology of the self which has been at the crux of inverting

much of the Imāmī discourse on marriage. The relationship between Commanding the Good

and Forbidding Evil, marriage and zinā will be elaborated on in chapters three, four and five.

## 1.4.1: COMMADING THE GOOD AND FORBIDDING EVIL: THE SOTERIOLOGICAL FOUNDATIONS OF IMĀMĪ MORALITY

Commanding the Good and Forbidding Evil or *al-amr bi al-maʿrūf wa nahī ʿan al-munkar* is a

theological doctrine understood on multiple but complementary levels. The central Qur'anic

verse establishing it is Q3:104 which states:

> Let there grow a community [of believers] among you who invite unto all that
> is good, and command the good and forbid evil, and it is they who shall find
> success (*fāʾizūn*) [in the Hereafter].[145]

The normative Imāmī understanding of the doctrine sees *al-maʿrūf* (good) as that which is in

accordance with obedience (*ṭāʿah*) to God. *Al-Munkar* is synonymous with sinful behavior

(*maʿṣīyah*). Good and evil are known through two ways, that which God and the Prophet

command and forbid, as well as what the "rational mind" (*ʿaql*) and Islamic law may extract.[146]

As Imāmīs understand the term *fāʾizūn*, its relation to Commanding the Good and Forbidding

Evil indicates that the principled activity is not simply Muslim flavored social work or an

---

[144] See Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2004).
[145] See also Q3:110; Q3:113-114; Q5:63; Q5:79; Q7:107; Q7:199; Q9:78; Q16:90; Q22:41.
[146] Al-Ṭabrisī, *Majmaʿ al-Bayān*, II, 806.

encouragement for better forms of worship, but the doctrine is fundamentally an ascetic

endeavor whereby the mission is to lead oneself and the community to soteriological success.

Other meanings have been given to the principle, such as "adhering to the commands of the

Qurʾan and the Prophet's exemplary tradition and injunctions" (Commanding the Good) and

"desisting from succumbing to one's carnal desires and whims" (Forbidding Evil). The worst

of desires are desires of sexual impropriety – namely zinā as seen in the section above.

Nonetheless, these varying and parallel definitions are consistent with the overall salvific

teleology of the doctrine as they all fall within the rubric of the virtuous formation of the self

through obedience to God and the eschatological struggle against sin.

1) In a report attributed to the Prophet, it is stated that: "Whoever commands the good and
   forbids evil is a vicegerent (*khalīfah*) of God's Prophet on earth."

2) In another report attributed to the Prophet, it is stated that: "'Truly God (Mighty and
   Exalted is He!) despises the weak believer who has no devotion (*zabr*).' When asked
   who the devotionless believer is, he said, 'He/she who does not forbid evil'."

3) In a report attributed to ʿAlī ibn Abī Ṭālib, it is stated that: "the foundation of God's
   law (*sharīʿah*) is commanding the good and forbidding evil."

4) In a report attributed to the fifth Imām Muḥammad al-Bāqir (d. 114/732-733), it is
   stated that: "Truly, commanding the good and forbidding evil is the path of the
   prophets, and the way of the righteous. It is a great divine [and moral] injunction upon
   which all other divine injunctions are founded on and upon which the roads [of correct
   way of serving God] are kept safe. [Through it] earnings are made lawful, iniquities are

amended. [Through it] the earth flourishes and justice is sought from wrong-doers and affairs are kept upright.[147]

Commanding the Good and Forbidding Evil are two of the major principles in the ten-point scheme of Imāmī religious fundamental practice (*furūʿ al-dīn*).[148] Like the Muʿtazilites, Imāmī jurists, especially modern ones, have gone as far as stating that adhering to the doctrine is a fundamental requirement for being a Muslim (*ḍarurīyāt al-dīn*) and rejection of it is tantamount to apostasy.[149]

The special focus on the doctrine by Imāmī jurists emphasizes a common understanding in the Imāmī hadith source texts that the ideal Shīʿī Muslim is not one who merely believes in the basic creedal doctrines of Shīʿī Islam. Those who merely believe are commonly called "lovers of the Ahl al-Bayt," yet the "genuine followers" (*shīʿah*) of the Ahl al-Bayt, that is, the truly faithful (*muʾminīn*), are those who also lead the morally good life. Pursuing and living the morally good life is thus necessary for salvation for it preserves the ontological union between an individual's heart and God. In the Shīʿī source texts, the ideal Shīʿī or *muʾmin* who has cultivated his/her pious self is described in the following ways:

1) In a report attributed to Muḥammad al-Bāqir, it is stated that: "a *muʾmin* is the one whose assent does not lead him/her into sin and falsehood. His anger does not take him/her out of truthful speech and when [given] power, he does not cross over to what is not right."[150]

---

[147] Al-Kulaynī, IX, 481-483.
[148] These two *furūʿ al-dīn* are as follows: 1) ritual prayer, 2) fasting, 3) the Hajj pilgrimage, 4) the payment of the zakat tax, 5) *khums* (one fifth tax), 6) Jihad, 7) Commanding the Good, 8) Forbidding Evil, 9) befriending the friends of the Prophet and his household (*tawallā*) and 10) distancing oneself from the Prophet and his household's enemies (*tabarrā*).
[149] Rūḥ Allāh al-Mūsawī al-Khumaynī, *Taḥrīr al-Wasīlah*, 2 vols. (Qum: Muʾassasah-yi Maṭbūʿāt-i Dār al-ʿIlm, n.d), I, 462.
[150] Al-Kulaynī, III, 592-593.

2) In a report attributed to Muḥammad al-Bāqir, it is stated that: "The messenger of God said, 'do you want me to tell you about the *muʾminīn*? He/she is the one whose trustworthiness the faithful rely on when it comes to their own lives and properties. Do you want me to tell you who a Muslim is? He/she is the one from whose tongue and hands Muslims are safe. An immigrant (*muhāhijr*) is one who migrates from evils and keeps away from what God has forbidden. It is not lawful for the faithful to be unjust towards a *muʾmin*, betray him/her, backbite or push him/her away.'" [151]

3) In a report attributed to Jaʿfar al-Ṣādiq, it is stated that: "A *muʾmin* is one whose earning is lawfully good, whose moral disposition is beautiful and whose conscience is sound. He/she gives to charity the surplus of his/her property and holds back the surplus of his/her words. People do not fear evil from him/her and he/she shows deference to others over his/her own soul."[152]

4) In a report attributed to Jaʿfar al-Ṣādiq, it is stated that: "If you want to know my [true] companions, then look at those who intensely refrain from the [sins of] the world and are hopeful for God's reward. If you see such people, [know] that they are my companions."[153]

A popular tradition ascribed to al-Ṣādiq advises believers that if they want to know the true nature of a person's devotion to God (*dīn*), "do not look at how much he/she prays and fasts, rather, look at how he/she treats people." The tradition, along with those stated above, reflect the integral and mutually salvific function that morality and devotion to God play of which Commanding the Good and Forbidding Evil is an animating and integral pillar of. The absence

---

[151] Ibid, III, 595-596.
[152] Ibid., 595.
[153] Ibid., 599.

of the morally good life, and particularly the action of forbidding immorality, results in the

nullification of good deeds and the denial of even the sincerest of prayers. As a technology of

the self, Commanding the Good and Forbidding Evil is a necessary component of developing

the virtuous self. In one tradition attributed to al-Ṣādiq, it is reported that:

> God (Exalted is He!) sent two of his angels to turn a city upside down on its
> people. When the angels came to the city [before destroying it], they found a
> man praying to God whilst in a state of humility and abasement. One of the
> angels then asked his companion, 'Do you see this man praying?' The other
> angel replied, 'Yes, I have seen him but I must obey the command which my
> Lord has tasked [me to do].' The other angel said, 'No, I will not bring about
> [any destruction] before going back to my Lord [and asking] about it [i.e. the
> man.]' The angel then returned to God (Exalted is He!) and said, 'O Lord, I
> went to the city and found your servant *so-and-so* praying to you and humbly
> beseeching you.' The Lord said, 'fulfill your task as you were commanded to
> do; he is a man who never even frowned for my sake in anger against evil [that
> was committed by people around him.]"[154]

In another tradition attributed to al-Ṣādiq, it is stated that:

> He (al-Ṣādiq) has said, God (Exalted is He!) sent revelation to [King] David
> (peace be upon him) stating that, 'I forgave your sin (*dhanbak*) and placed its
> blame on the Israelites (Banū Isrāʾīl).' David then said, 'How can that be O
> Lord for you do not commit injustice!' God said, 'Because they did not hasten
> to you in disavowing what you had done.'"[155]

The traditions outline that abstinence or innocence from sin is not enough for virtue and

salvation and the pious formation of the self. Opposing and disavowing evil is also a necessary

component of leading the morally good life and thereby preserving one's ontological relation

with God. Failing to do so makes one guilty of the sin even if it was perpetrated by others in

one's community. As such, the Imāmī source-texts illustrate how not even the piety of a

humble beseecher of God is enough for salvation if conscious involvement in maintaining and

---

[154] Al-Kulaynī, IX, 490-491. The tradition exists in a fuller version in a work attributed to ʿAlī al-Riḍā which has
the following addition at the beginning: "Before you people were destroyed as a result of their sinful acts which
their priests and rabbis did not forbid." See ʿAlī b. Mūsā al-Riḍā (attrib.), *al-Fiqh al-Mansūb ilā al-Imām al-Riḍā*,
ed. Muʾassasat Āl al-Bayt (Mashhad: Muʾassasat Āl al-Bayt, 1406/1986), 375.
[155] Ibid., IX, 489-490.

defending God's moral order in the world is not maintained. This failure is equated with the

mortal sin of *ghaflah* or 'carelessness.'[156]

## 1.4.2: COMMANDING THE GOOD AND FORBIDDING EVIL, MORALITY AND THE LAYERS OF THE *'AQL*

Commanding the Good and Forbidding Evil, and its sister principles such as *'adam al-*

*mafsadah* and *lā ḍarar wa lā ḍirār*, is also a legal category used in *fiqh*. Yet within the Imāmī

discursive tradition, its legal significance is secondary relative to its primacy as a theological

doctrine. Al-Ṭūsī, quoting one of the major trends of Imāmī discourse in his time, demonstrates

that God's divine moral gauge is imbued in the human being through God's act of subtle grace

(*lutf*). As such, before we come to know the principle of Commanding the Good and

Forbidding Evil through the source-texts, we derive it through the *'aql*.[157] As seen earlier,[158]

the *'aql* is the intellective and perceptive mechanism of the metaphysical heart. Dominant in

the Imāmī tradition is the view that the *'aql* holds a quadripartite role in the human conscious

experience which people are believed to share at varying degrees.

The first (exoteric) layer of the *'aql* is logical and mathematical thinking which some

modern Shī'īs have popularly coined as the "industrial intellect" (*'aql-i abzārī*).[159] It suggests a

human quality that is universal and can be worldly in function even though all human

capacities must be used in service of God. This layer includes the human ability to think

---

[156] Its Christian equivalent is that of *acedia*. For a recent Catholic treatise on the subject, see Dom Jean-Charles Nault, *The Noonday Devil: Acedia, the Unnamed Evil of Our* Times (San Francisco: Ignatius Press, 2015).

[157] See al-Ṭūsī, *al-Iqtiṣād al-Hādī ilā al-Ṭarīq al-Rashād* (np: Nashr-i Kitābkhānah, 1375/[1955-1956]), 146-151. Some later Imāmī scholars would dismiss the whole discussion as irrelevant since the duty is already made clear in revelation and there is therefore no point in having a theoretical debate on the *'aql*'s ability to derive the doctrine on its own. See Cook, 288. Note that this debate is different from the Imāmī argument that morality can be derived by the *'aql*, which is the most dominant tendency in the tradition.

[158] See fn. 81, 83 and 84.

[159] A major proponent of this neologism in the Persian language is Ḥasan Raḥīmpur Azghadī, a popular Iranian public speaker and cultural commentator.

mathematically, both simple and complex, verbal and non-verbal, as well as the ability to derive logical truths, such as the law of non-contradiction (*ijtimāʿ al-naqīḍayn*). As a rational faculty, this layer of the intellect also includes the human ability to grasp, ponder, produce, and criticize all forms of categorical thinking and mediated learning, such as the human and material sciences. In short, it is the human ability for deductive and inferential thought. This layer of the intellect is shared by both believers and non-believers. One's relationship to God does not determine its strength, meaning that believers do not have any advantage over non-believers in 'material' or 'worldly' intelligence.

The second layer is that of common sense thought. Common sense knowledge is knowledge and *patterns of knowing* derived through common human experience. A prominent example in Islam's discursive tradition is the world of creation being a sign of God's creative and nurturing power. The Qur'anic narrative implies that all creation requires a creator, and all organization requires an organizer, and since the world is a world of creation and nature is by default organized, common sense *should* lead a sensible person to conclude that there is a creator and sustainer of the world. The *ʿaql* is thus the means of making this connection. In other words, the Qur'an uses this form of the intellect as a tool for reflecting on the creative, nurturing and providential power of God and humankind's ultimate accountability to him. As a consequence of this realization, the person in possession of a healthy *ʿaql* is expected to desist from opposing divine truth and rebellion against God.[160] Rebellion against God is understood as a deficiency and rejection of *ʿaql* and thereby common sense.[161]

---

[160] See for example Q36:77 which states: "Does man not see that it is We who created him out of a drop of sperm?" The verse, and others like it, is commonly understood by Imāmīs as an appeal to humankind's common sense to both God's existence and his creative power and thus the 'foolishness' of opposing 'divine truth'.
[161] See for example Q7:184-185; Q9:127; Q10:25; Q39:9.

The third layer of the ʿaql is morality and the axis which pushes one to the virtue of charity.[162] The *healthy* human intellect (one that is not polluted by sin), or reason, is always morality in the Imāmī discursive tradition and necessary for the self-fashioning of the virtuous Muslim subject. It is the mechanism of the heart that perceives evil and the morally good. By the morally good, the Imāmī tradition is emphatic that it is a question of moral objectivity and not subjectivity.  In terms of one's legal duties (*taklīf*), moral-legal responsibilities are subject to a circumstantial framework (*mawḍūʿ*) as well as the discretionary conclusion of a jurist (at least from a modern *uṣūlī* perspective).[163] But mainstream Imāmī discourse holds that morality can also be understood theologically. In this sense, morality drives and is a result of jurisprudential discretion,[164] but it also transcends the framework of the law. It transcends it to the extent that an individual or social group may intrinsically derive morality without immediate recourse to the law and its procedures.

Two examples or hypothetical situations are often given by Imāmī jurists-theologians believed to problematize moral subjectivism. The first and most popular example is that of divine prophets and hell. Can God condemn all of his prophets to eternal hell after promising them heaven? Or can God command humankind to follow a certain way of life but then condemn them to eternal torment for following it? The common Imāmī answer is in the negative as its mere possibility would make the totality of revelation incoherent and unreliable as a means for divine guidance. Stated differently, the mere possibility of providential

---

[162] By charity I mean the theological virtue of doing good to others for God's sake. In this sense, I speak of zakat as a theological virtue and not zakat in the *fiqhi* sense. Zakat as a theological virtue is wide in its scope, it includes, among other things, the charity of teaching others, smiling at them, bringing up their mood etc.

[163] For a good discussion on the modern uṣūlī and akhbārī divide in Imāmī law, see Robert Gleave, *Inevitable Doubt: Two Theories of Shīʿī Jurisprudence* (Leiden: E. J. Brill, 2000); *Scripturalist Islam: The History and Doctrines of the Akhbārī Shīʿī School* (Leiden: E.J. Brill, 2007).

[164] It is thought that morality is not an arbitrary construct by a jurist. General moral principles available in the tradition guides the moral framework through which specific moral laws are produced by the law.

incoherence could give a person justified grounds in rejecting divine revelation since it could be a trick or ploy by God.

There is also the Imāmī appeal to moral universalism. A common example used in Imāmī seminaries is the universal appeal of humankind's sense of 'justice' (*ʿadālah*). All around the world, some Imāmīs claim, people would feel a sense of injustice and feel wronged if their property or land was taken away from them by an outside power. The universalism in this attitude suggests that the moral view on land theft is not a historical accident, but a moral attitude that is deeply ingrained in the creation of humans and therefore not an accident of history.

Imāmī theologians do not deny that there is moral and ethical variety across space and time. Morality, as it is popularly asserted, has a range but the range has its limits and as such, moral values cannot range indefinitely. Human beings have an innate ability to acquire scattered data from their environment, but the interpretive and organizational process of their thoughts, and the subsequent construction, and ability to discover and recognize systems of morality, is innate. The constrained, fixed and determinative basis of human morality is what sets the basis for discovering objective moral norms. The ability to perceive and categorize concepts of evil and good are thus divine, objective and universal. Humans, however, are limited in their ability to discover objective moral concepts on their own. God is therefore necessary in guiding the development of humankind's innate moral structure through revelation.

For morality to be objectively *true*, there is one necessary condition; that God should exist. Without God, Imāmī theologians claim, there can be no ontological grounds for objective moral norms. Even if they are shared universally or ingrained in a human, they can still be the

result of natural or physical causes that instinctively drive humans to adopt a particular set of ethical possibilities.[165] God's moral command, Imāmīs assert, cannot be arbitrary either as the good is a matter of God's own essence and not arbitrary opinion. Here we find a subtle but fundamental difference between moral objectivity as devised by the Muʿtazilites and the Imāmīs. The Muʿtazilites generally saw morality as an objective, universal standard which God himself abides by. Universal moral principles are therefore cosmic moral codes external to God which are necessary for God to abide by (*wajaba ʿala Allāh*). Nearly normative to Imāmī discourse is that goodness is part of God's essence. There is no cosmic standard outside God; God's own essence is the standard for the good. The good is necessary *of* God by virtue of his own essence (*wajaba ʿan Allah*). God's moral order is therefore not an arbitrary opinion but an expression of his own essence. The expression of God's essence translates to humanity through both an ingrained ability to sense good and evil, as well as concrete guiding notions through God's special revelation to prophets.

Commanding the Good and Forbidding Evil is thus a universal attitude. Imāmīs in general hold that although not all the contents of moral codes in the world are objective, there are still objective norms that the mind can grasp but the proper grasping of these norms must be aided by revealed command.

The final layer of the *ʿaql* is the center through which one perceives God. It is the part of the *qalb* where the inner vision and inner hearing of God takes place. Normative to the Imāmī tradition is the impossibility of seeing God with the physical eye. As ʿAllāmah al-Ḥillī once claimed, God being the Necessary Existent (*wājib al-wujūd*), makes him by definition

---

[165] The idea of a biologically driven *ʿaql* has historically been a mainstream concept in Imāmī discourse, one that goes back to as early as the 9th century CE or even earlier. The biologically driven *ʿaql* is that which humans share with animals as they do partake in various but minimal degrees of rationality. These include the care that animals offer their young, or the sense of herd morality that act as a survival mechanism.

impossible to see,[166] at least in so far as seeing his essence is concerned. Yet Imāmīs did not

deny that God could be seen from the heart. The beatific vision, or *shuhūd*, is the trait of God's

saints (*awlīyah*), including his prophets and the Imāms. When the soul experiences God, it

experiences his immaterial light (*nūr*) through the reality and essence of one's inner faith and

ontological bond with God (*ḥaqīqat al-īmān*), or termed differently, the eye and ear of the

heart (*ʿayn al-qalb, ʾudhun al-qalb*).[167]

The chambers of the *qalb* and the layers of the *ʿaql* are part of an intricate system that

sets the human ontological relationship with God and makes the pious fashioning of the self

possible. The effect of sin is not merely an action that incurs divine wrath and displeasure, but

it operates on the level of disorienting and disrupting one's inner spiritual faculties and even

warping one's moral outlook of the world. This means that in its natural state, the *qalb* sees

and hears God and clearly understands - or is quick to grasp - the morally good. Yet when sin,

along with the influence of demons (*shayāṭīn*), disrupts the inner faculties and leads to the

death of the heart (*mawt al-qalb*), a person is taken out of the path of salvation and his/her

heart is blinded to the divine. As a corollary of the corruption of the *ʿaql* and *qalb*, a person's

grasp of God and moral compass is also disoriented. Eschatologically speaking, the Imāmī

view of the end of the world recounts that future humans will "consider evil as morally good"

and "the morally good as evil." This, the Imāmīs hold, is due to the sins that have corrupted the

world population's *ʿaql* and thereby its grasp of moral truths. In its eschatological narrative,

the Imāmī and Islamic tradition in general believes that zinā in the end of times (*ākhir al-*

*zamān*) will be considered moral good for sins will corrupt the human *ʿaql* and thereby the

human moral compass. As zinā will prevail over marriage in the end of times, so will

---

[166] ʿAllāmah al-Ḥillī, *Kashf al-Murād fī Sharḥ Tajrīd al-ʿItiqād* (Mashhad: n.p, n.d), 182.
[167] See fn. 120.

illegitimate births due to zinā (*yakthuru awlād al-zinā*) according to one tradition attributed to the prophet Muhammad.[168] The *ʿaql*'s function in the metaphysical heart thus plays a multilayered role in the salvation of humanity and its ontological bond with God. It is the perceptive locus of the normative Muslim's moral gauge, common sense recognition of God's providence and being in the world, and the means to the beatific vision of God. Aside the industrial use of the intellect, all other parts are subject to corruption and ontological disorientation as a result of sin. The Imāmī source-texts that inform the juristic conception of sin and its corrosive effect on the *ʿaql* are ubiquitous. Here I will cite only a few:

1) In a tradition attributed to the prophet Muhammad, it is stated that: "If it was not for the demons hovering around the hearts of the sons of Adam, they would be able to see the Kingdom [of God in this world.][169]

2) The Prophet Muhammad is also reported to have said: "If it was not for the disbandment of your hearts and your excess in speech, you would hear what I hear." [170]

3) Mūsā al-Kāẓim is reported to have said: "God (Exalted is He!) revealed to [king] David, 'O David, warn your companions against the love of desires, for those whose hearts are attached to worldly desires [and succumb to sins,] their hearts are veiled from me.'"[171]

---

[168] Muḥammad b. Ḥasan al-Ḥurr al-ʿĀmilī, *Tafṣīl Wasāʾil al-Shīʿah ilā Taḥṣīl Masāʾil al-Sharīʿah*, 30 vols., ed. Muʾassasat Āl al-Bayt (Qum: Muʾassasat Āl al-Bayt, 1409/[1988-1989]), XV, 348.
[169] Ibn Abī Jumhūr, IV, 113; al-Fayḍ al-Kāshānī, *al-Wāfī*, 26 vols. (Iṣfahān: Kitābkhānah-yi Imām Amīr al-Muʾminīn, 1406/1986), IV, 150.
[170] Muḥammad Rayshahrī, *Mīzān al-Ḥikmah*, 12 vols. (Qum: Dār al-Ḥadīth, 1422/[2001-2002]), VIII, 3451.
[171] Ḥasan b. ʿAlī al-Ḥarrānī, *Tuḥaf al-ʿUqūl*, ed. ʿAlī Akbar Ghaffārī (Qum: Jāmiʿ-yi Mudarrisīn, 1404/1983), 397.

4) In a tradition attributed to ʿAlī, it is stated that: "He who loves something makes his eyes blind and his heart sick. Such a person sees through corrupt eyes and hears with impairment. Lust tore apart his/her *ʿaql* and the world killed his/her heart. [172]

5) In another tradition attributed to ʿAlī, it is stated that: "purify yourselves from your base desires and you will perceive high spiritual stations."[173]

Sin is the ultimate object of the *munkar* or evil as it is the anti-thesis to the divine good. Imāmī jurists are clear that prohibitions in the law are evil (*munkar*) and thus immoral (*qabīḥ*).[174] Although there are differences in opinion on whether or not some actions are prohibited, the relationship between legal prohibition, evil and immorality is based on the conception that every act of legal infraction is disobedience to God and is thus an act of immorality in respect to God. Imāmīs disagree as to whether or not the wrongful act is itself *essentially* evil.[175] What they agree on is that the main driver behind the corruption of the heart is the *will* to disobey God. What therefore breaks the ontological bond between man/woman and God are conscious diversions of the will.

As sin corrupts and sickens the *qalb*, Commanding the Good and Forbidding Evil is an act of the will and a movement of the inner faculties to reject the corrupting entity of sin and prevent the death of the metaphysical heart. Although the act of violence is not necessary, and the Imāmī tradition was known to prohibit it without the permission of an infallible Imām,[176] cognitive disdain is obligatory. If a person does not want to reject the action, even internally, it

---

[172] Muḥammad b. Ḥusayn al-Sharīf al-Rāḍī, *Nahj al-Balāghah*, ed. Ṣubḥī Ṣāliḥ (Qum: Hijrat, 1414/1993), 160.
[173] Al-Tamīmī al-Āmidī, *Ghurar al-Ḥikam*, 436.
[174] Al-Shahīd al-Thānī, *al-Rawḍah al-Bahīyah*, II, 414; for older sources, see ʿAlī b. al-Ḥusayn al-Sharīf al-Murtaḍā, *al-Dhakhīrah fī ʿIlm al-Kalām*, ed. Aḥmad Ḥusaynī (Qum: Muʾassasat al-Nashr al-Islāmī, 1411/[1990-1991]), 551.
[175] This means that even if an action is unintentional, it would still be evil whereas the other view holds that actions, even if painful and wrong, are only evil when done intentionally.
[176] Cook, 260; see also fn. 142.

is a sign of an interior dysfunction of the *qalb*. A state of neutrality on the matter only furthers

the interior dysfunction. Commanding the Good and Forbidding Evil therefore functions on

two soteriological levels. On the individual level, it works to reorient one's inner spiritual

faculties from their dysfunction or potential dysfunction. On the communal level, it attempts to

rectify an environment that may be poisonous to the metaphysical heart and the growth of *īmān*

for both the present community and successive generations. If ontological corruption of the

heart and *ʿaql* is pervasive and 'global' enough, Imāmī tradition holds that it will trigger

Armageddon and the end of times (*ākhir al-zamān*). As seen earlier, the faithful community is

the cradle in which the healthy *qalb* can grow and an ontological bond with God can be

strengthened; a polluted community can significantly complicate this growth. If social

disharmony and *fitnah* is a problem for Imāmī jurists, it is because the disharmony operates

primarily on a theological and eschatological level, and not simply a secular one.

The following chapters of this dissertation will outline specific cases demonstrating the

choreography between the theological concept of Commanding the Good and Forbidding Evil,

soteriology and marital law.


## 1.5: CONCLUSION

The *qalb* stands at center of the Qur'an's semantic field of sin. One's status as an ingrate vis-à-

vis God (*kufr*) stands in opposition to gratefulness, faithful trust and ontological bond with God

(*īmān*). These two states are opposite ontological poles of the same field. Human intentions

and actions supply the object-orientation through which the heart inclines itself, be it divine

truth (*ḥaqq*) or selfish delusion (*bāṭil)*. Cultivating the pious self is aimed at attaining the

"truth" bringing about pious insight (*baṣīrah*). Movement away from truth through sin brings

about spiritual blindness (ʿaman). Most actions in the Qurʾanic narrative as interpreted by Imāmīs have oppositional realities in that virtuous deeds generally have their sinful equivalents within their respective semantic fields. The particular vice of interest in this study is zinā which stands as one of the more prominent moral transgressions and eschatological crises in Muslim discourse. It is the anti-thesis to the Imāmī program of fashioning the virtuous self. The pious opposite of zinā in the Islamic narrative is marriage, a matter which, for all its moral (and not only legal) worth, plays a considerable role in the salvation of the normative Muslim and in preserving the ontological bond between man/woman and God. If the doctrine of Commanding Good and Forbidding Evil is to align the *qalb* in the path of salvific success, then an integral part of Commanding the Good is to encourage marriage (chapter two), whereas an essential part of Forbidding Evil is to prevent zinā (chapter three, four and five).

Understanding the soteriological roots of legal and moral concepts in Islam, particularly those that draw from the Qurʾan's semantic fields, gives us insight as to the limits of religious hermeneutics in so far as assumptions of reductionism (e.g. that all language is unequivocal) and radical indeterminacy are involved.[177] There are normative theological principles (*ḍarurīyāt al-dīn*) without which there can be no sense of what "Islam" is. What are considered "core" *ḍarurīyāt al-dīn*[178] do not require *basic* interpretation (due to their overwhelming clarity) but are essential principles integral to the Islamic discursive tradition. Moreover, many legal themes - the prohibition of zinā being a prominent one - directly draw from these essential core principles. This means that much of Islamic law cannot be understood in isolation as it shares many of its essential parameters with soteriological theology for it is the

---

[177] I would like to thank Mohammad Fadel of the University of Toronto for bringing this insight to my attention.
[178] There have been some historical differences as to what these are which is why I have added the term "core" which refers to aspects of Islam's essential principles that are universally agreed upon, like the aforementioned prohibition on zinā or, for example, the *basic* prohibition of intentional murder.

framework for juristic moral assumptions. As every action in Islamic law falls under the rubric

of the Sharīʿah's practical duties (*al-mawqif al-ʿamalī*),[179] every legal ruling in Imāmī law

defines a person's ontological relationship with God. The law and morality are integral aspects

of the same project of soteriology. Any gendered politics of reform in Islamic law cannot

ignore the theological, soteriological and eschatological underpinnings of marriage law.

---

[179] See Abū Faḍl Najm Ābādī, *al-Uṣūl*, 3 vols. (Qum: Mu'assasat Āyat Allāh alʿUẓmā al-Burūjirdī li-Nashr Maʿālim Ahl al-Bayt, 1380 H.Sh/2001), I, 5-6. This also applies to cases where there is no clear ruling from the sources (a particular position must nevertheless still be defined), see for example Muḥammad Riḍā Muẓaffar, *Uṣūl al-Fiqh*, 2 vols. (Qum: Mu'assasat al-Nashr al-Islāmī, 1430/2009), I, 8, 19; Muḥammad Bāqir al-Ṣadr, *Buḥūth fī ʿIlm al-Uṣūl*, 7 vols., ed. Maḥmūd Hāshimī Shāhrūdī (Qum: Mu'assasah-yi Dāʾirat al-Maʿārif bar Madhhab-i Ahl al-Bayt, 1417/[1996-1997]), IV, 9.

CHAPTER TWO

CHOOSING A PERMANENT SPOUSE IN IMĀMĪ JURISTIC SOTERIOLOGY:
INTERFAITH & PREPUBESCENT MARRIAGE

**2.1: INTRODUCTION**

At first glance, marriage is a business transaction or contract of exchange (*muʿāwaḍah*) in

Imāmī law. The discussions make it analogous to slavery as the contract transfers ownership of

a wife's sexual potential to her husband in exchange for financial obligations. But as Kecia Ali

has argued - while structures of dominion are still withstanding - the idea of a transaction in

Islamic law is a metaphor and the comparison to buying slaves is present in part for its utility

in legal discussions.[180] For Imāmī jurists, transactional language is not to be taken literally as

the *muʿāwadah* is not a real one to begin with. It does not stipulate a dowry (*mahr*) for its

validity and no party can insert a clause for the contract's arbitrary annulment (*khiyār*), an

option that is usually possible with conventional transactions. More importantly, Imāmī law

classifies marriage as a "transaction" in so far as it sets the grounds for the mutual transference

of responsibilities (e.g. financial, sexual etc.) that are analogous to but categorically different

from business and property contracts.  A husband's "buying" and "owning" of his wife's

vagina (*buḍʿ*) is only a metaphor for sexual obedience (*ṭāʿah*). Sexual obedience is only

marginally understood as a form of domination (as men must also be sexually "obedient" to

their wives albeit in a much less stringent manner) but more so as a central marital condition

and salvific responsibility that is aimed at protecting men from zinā and other forms of sexual

sins who - for the most part - *may* be prey to compulsive sexual sins. Marriage protects women

---

[180] Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge: Harvard University Press, 2010), 7.

from sexual sins, but their desires – in general - are thought to be non-compulsive.[181] As Judith

Tucker states about Islamic legal practice in Ottoman Syria and Palestine,

> Like polygyny, slave concubinage was expensive, and a realistic option for
> only a few. By making sex with multiple partners licit for men and not for
> women, however, the muftis elaborated a legal doctrine that constructed male
> sexuality as a more active and demanding force than that of females. Likewise,
> any social interaction between a man and a desirable woman was fraught with
> sexual peril: a man was expected to attempt to have illicit sexual relations with
> any attractive woman with whom he might find himself alone.[182]

Concubines and polygyny was out of the question for most males. Marriage to a single woman

was what most males could afford. This financial restriction made illicit means more likely and

it was therefore imperative that such a marriage function as best as possible as an alternative to

zinā. For this reason, marriage was not just a legal phenomenon, but a form of worship and

ritual practice that ensured the ontological bond between a man and God.

Nowhere is the distinction between marriage and real transactions more apparent than

when Imāmī jurists assert that the essence of marriage is in reality part of Islamic ritual

practices (*'ibādāt*) and not transactions.[183] It is an act of worship - like prayer or fasting - for it

---

[181] Women are also thought of as having sexual desires, but mainstream Imāmī texts do not believe women are
prey to compulsive sexual desires as men are. For this reason, sexual obedience is only binding once every four
months, unless the wife's desires make her prone to sexual sins. Other forms of female desires are framed as
more important and as such, its corollary rules are relatively more stringent. For example, in nightly division laws
(*qasm*), men are required to spend a whole night with their wives once every four nights. Although intercourse as
a default is not obligatory, the husband must share the bed with his wife and must be close enough so that she
feels the warmth of his body. Furthermore, the husband is not allowed to turn his back towards his wife but must
either sleep upward or face her in bed. Refusal to do so on the part of the husband can be grounds for divorce, see
chapter five.

[182] Tucker, *In The House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley and Los
Angeles: University of California Press, 2000), 152.

[183] al-Shahīd al-Thānī, *al-Rawḍah al-Bahīyah*, V, 120. Although I have not seen such terms used in Sunnī law,
there are some distant parallels. For example, on the Mālikī notion of the marriage contract, Mohammad Fadel
states that Mālik, the eponymous founder of the Mālikī school, reportedly discouraged contractual stipulations in
marriage contracts on the theory that their inclusion is inconsistent with the relationship of trust at the heart of
marriage. Further, religious conceptions of marriage manifest themselves even in strictly legal matters. Islamic
law treats marriage contracts differently from commercial ones. To illustrate, the norms of arm's-length
bargaining permit each party to seek its maximum advantage (*mushāḥḥa* or *mukāyasa*) in commercial contracts.
Marriage contracts, however, are construed according to the principal of mutual generosity (*musâmaḥa* or
*mukârama*), pursuant to which the norms of magnanimity and sharing prevail over individual welfare-maximizing
interpretations of the contract." As I suspect, marriage in this view may have had some underlying ethics that
derived its notions of generosity from ritualized understandings of charity as present in the *'ibādāt*. Its

plays a central role in Islamic soteriology as an inhibitor of damning sins and an opportunity for spiritual growth gaining rewards in the afterlife. Put more succinctly, marriage is a technology of the pious self. Despite later transactional jargon, introductory chapters to marriage make sure to frame marriage not as a matter of business but a fundamental question of human salvation and self-cultivation.

If marriage is a question of salvation, who one chooses to marry is *a fortiori* a question of salvation. As sex stands at the center of marriage, all forms of sex during marriage – and not just zinā - become soteriologically operative. It thus follows that in Imāmī marital soteriology, who one chooses to marry, and how one decides to perform sex during marriage can either be a matter of theophany, or a corruption of the metaphysical heart. As a response to this construct of marriage and sex, Imāmī law has developed a regime of rules, disciplines and regulations that manages the operation of marriage and its sexual corollaries.

This chapter is divided into three parts. The first part will be an introduction to marriage, and delineate how sex is not just soteriologically operative outside of marriage (zinā) but also operative within marriage, meaning that how one performs sex in marriage is a technique of the body and may lead to either soteriological success or damnation. The second and third parts will look at the relationship between salvation and one's choice as a marriage partner. Here I will look at two specific cases, namely the controversies of interfaith and prepubescent marriages. I have chosen these two case studies for they are subjects that force

---

otherworldly and salvific aspect is perhaps more explicit with the Ḥanafīs. For example, Ibn ʿĀbidīn, the 18th-19th century Ḥanafī Syrian jurist, believes that "aside from faith in God, marriage is the only religious obligation that began with Adam and Eve, persists for the entirety of human history, and continues into the afterlife." See Mohammad Fadel, "Political Liberalism, Islamic Family Law, and Family Law Pluralism," in *Marriage and Divorce in a Multicultural Context Multi-Tiered Marriage and the Boundaries of Civil Law and Religion*, ed. Joel A. Nichols (New York: Cambridge University Press, 2011), 182.

out some of the clearest and most explicit juristic references (and aims) to soteriological law in permanent marriage.

My aim with this chapter is to shed light on the overall driver of marriage law in juristic discourse and the wider aims of matrimony in the Sharīʿah. What I conclude from these studies is that Muslim juristic law, particularly Imāmī juristic law, is not about honoring a patriarchal cosmology or making wives guilty *a priori* by virtue of their female sex as some studies in secondary literature suggest.[184] The driver of Imāmī juristic law is primarily framed soteriologically on a set of assumptions of how the human soul and heart can be saved through a set of correct marital practices. Imāmī juristic discourse, therefore, *primarily* sees its legal project in marriage as a program to save men, women and their offspring from damning sins. As such, its aim is not the preservation of male power or gendered hierarchies, but provide an eschatological balance that favors virtue and piety.

A final note is necessary to mention before I begin. First, there are a number of considerations that set temporary marriage apart from permanent marriage in Imāmī law and as such, temporary marriage will be discussed separately in the following chapter. Perhaps the most significant distinguisher here is that the production of pious offspring is not an important theme in temporary marriage. To the contrary, as it is a temporary contract with a partner, there are legal allowances that make contraception much easier and the production of offspring less likely. Although temporary marriage in Imāmī law is fundamentally a mechanism for salvation as well, the way it functions soteriologically is somewhat different. For this reason, I will deal with it in a separate chapter.

---

[184] See for example Kathryn M. Kueny, *Conceiving Identities: Maternity in Medieval Muslim Discourse and Practice* (New York: State University of New York Press, 2014).

## 2.2: HOW TO THINK ABOUT MARRIAGE, FORBIDDEN SEX AND DEMONIC INFLUENCE IN IMĀMĪ MARITAL SOTERIOLOGY

Imāmī legal treatises on marriage (*kitāb al-nikāḥ*) often begin with citing source-texts demonstrating the centrality of marriage for the salvation of Muslims. They quote the Qur'an stating "marry those whom you are pleased with from among women"[185] and "marry the single among you as well as the male and female slaves, if they fear poverty, God will enrich them through His bounty, for indeed God is Infinite [in mercy and richness] and Omniscient."[186]

The traditions are more specific; in one tradition attributed to the Prophet Muhammad, it is stated that "whoever forsakes my *sunnah* (exemplary tradition) is not of me" and in another one it is stated "marriage is of my *sunnah*."[187] He is also reported to have said "whoever marries has safeguarded half of his salvation (*aḥraza niṣf dīnihi*), so he must be conscious of God in the other half."[188] Saving half of one's salvation and *īmān* is generally understood to be in reference to saving believers from zinā and other sexual vices (e.g. oral sex, sinful gazes, masturbation etc.) by giving them appropriate and licit outlets for sex through the ascetic practice of marriage. Unless one is afraid of falling into sin, most schools in Islam do not consider marriage obligatory. However, even without falling into sin, one's *īmān* - no matter how pious an individual is - will never be complete without marriage as it is not just about sin prevention but also about the creation of the next pious generation.

---

[185] Q4:3.

[186] Q24:32

[187] Al-Kulaynī, XI, 131; Muḥammad b. Muḥammad al-Ashʿath, *al-Jaʿfarīyāt* (attrib.) (Tehran: Maktabat al-Nīnawa al-Ḥadīthah, n.d), 89; al-Ṭabrisī, *Makārim al-Akhlāq*, 196; Faḍl Allāh b. ʿAlī al-Rāwandī al-Kāshānī, *al-Nawādir*, ed. Aḥmad Ṣadiqī Ardistānī (Qum: Dār al-Kutub, n.d), 35; Ibn Abī Jumhūr, III, 283. A parallel ḥadīth holds the same meaning: "whoever forsakes my Sunnah is not of me, and verily marriage is of my Sunnah," see Ibn Abī Jumhūr, IV, 350.

[188] Al-Kulaynī, X, 582; al-Ṣadūq, *Man Lā Yaḥḍuruhu al-Faqīh*, II, 383; *al-Muqniʿ* (Qum: Muʿassasat al-Imām al-Mahdī, 1415/1995), 301; al-Ṭūsī, *al-ʾAmālī*, 518; Muḥammad b. Muḥammad al-Shuʿayrī, *Jāmiʿ al-Akhbār* (Najaf: Maṭbaʿat Ḥaydarīyah, n.d), 101; al-Ṭabrisī, *Makārim al-Akhlāq*, 196; Ibn Abī Jumhūr, III, 289.

The source-texts are just as emphatic, if not more, on the salvific importance of children. The Prophet Muhammad is reported to have stated: "Marry and procreate!"[189] He is also reported to have said: "When the son of Adam dies, his accumulation of deeds cease except in three instances, on-going charity, knowledge whose benefit continues to be reaped and a righteous child (*al-walad al-ṣāliḥ*) who prays for him."[190] In a tradition attributed to the sixth Shīʿī Imam Jāʿfar al-Ṣādiq (d. 148/765) it is said that "a gift bequeathed to a believing servant by God is a righteous offspring that seeks forgiveness for him."[191] Prayers for parents by righteous offspring are of special soteriological importance as they are one of the five instances of prayer that are never rejected by God.[192] Another popular Prophetic tradition in the legal texts states that

> [Do not remain single,] marry [and produce offspring] so that on the Day of Resurrection I may take pride in front of other communities [at your numbers who attain salvation] as even the miscarried fetus will stand angrily at the door of heaven - who, when asked to enter heaven - will refuse and say "not until both my parents enter before me!" God, glorified and sublime is He, will order an angel from among the angels and say: "bring me both parents" and he will order both of them into heaven and will say "this is a gift from my Grace.[193]

The legal treatises do not shy away from giving advice (both from carefully selected source-texts as well as their own judgments) as to what kind of spouse one should choose in the hopes of optimizing salvation, sustaining marriage, having ideal children and preventing sin. The source-texts recommend that men choose virgins (*abkār*, sing. *bikr*) as they are more fertile and abundant in milk[194] and hence more likely to ensure the existence of the next pious

---

[189] Quṭb al-Dīn Saʿīd b. ʿAbd Allah al-Rāwandī, *al-Kharāʾij wa al-Jarāʾiḥ*, 3 vols. (Qum: Muʾassasah-yi Imām-i Mahdī, 1409/[1988-1989]), II, 920.

[190] Al-Fattāl al-Nishābūrī, II, 429; al-Shuʿayrī, 105; Ibn Abī Jumhūr, I, 97; III, 260, 283; IV, 181; al-Shahīd al-Thānī, *Munyat al-Murīd*, 103 and 469.

[191] al-Ṣadūq, *Man Lā Yaḥḍuruhu al-Faqīh*, III, 481; al-Ṭabrisī, *Makārim al-Akhlāq*, 218; *Mishkāt al-Anwār*, 280; Ibn Abī Jumhūr, IV, 360.

[192] Al-Kulaynī, IV, 390.

[193] Al-Ṣadūq, *al-Tawḥid*, 395; al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 401; Ibn Abī Jumhūr, III, 287.

[194] Ibid., X, 596.

generation. Women who have never married are recommended as they are more polite and less likely to be "foul-mouthed."[195] Imāmī jurists reason that women who come from well-mannered families are often corrupted and learn foul words from their husbands. The selected source-texts further advise men not to fall for sterile and promiscuous women even though they may be attractive[196] It is recommended that the wife be from a righteous and pious family as she is more suitable to place one's "seed" (*nuṭfah*) in.[197] In other words, she is more likely to produce and raise righteous and pious children and thus safeguard the salvation of the future community. This goes without saying that the selected spouse should be morally pure (*ʿafīfah*) so as not to impart moral impurity to her children. Spiritual diseases, like bodily diseases, can be transmitted from generation to generation both behaviorally and sexually.

In addition to beauty, men are warned not to marry women for their wealth as piety in a spouse must always be prioritized over anything else.[198] Before choosing a spouse and finalizing the marriage, one is recommended to perform a two-unit prayer to invoke God's grace on the marriage. Without God's grace, no salvific success can be found in anything and no self-fashioning towards divine truth can be possible. To the contrary, the Imāmī tradition holds that the absence of God's grace opens a vacuum for Satan to enter the metaphysical heart at full capacity.

The juristic introductions to marital law are formally androcentric yet most of the moral recommendations are inclusive of a female audience. Like men, women are encouraged to prioritize piety when considering suitors and are discouraged from marrying morally

---

[195] Ibid.
[196] Ibid., X, 595; al-Ṣadūq, III, 392; Ibn Abī Jumhūr, III, 287.
[197] al-Kulayni, X, 591; al-Ashʿath, 90; al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 402; al-Rāwandī, 12.
[198] al-Kulaynī, X, 593; al-Ṣadūq, *Man Lā Yaḥḍuruhu al-Faqīh*, III, 392; al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 400, 403.

questionable or sterile men. This is apparent when jurists discuss the consequences of *tadlīs*.

*Tadlīs* (lit. deception) refers to hiding personal defects before the conclusion of a marital

contract. These hidden defects (*ʿuyūb*) may involve mental illness (*junūn*) and sexual

disabilities that make intercourse difficult if not impossible. In most instances, these cases of

deception can lead to an automatic dissolution (*faskh*) of the marriage. Alternatively, any

apostasy from either side also results in *faskh*. This form of dissolution is part of a discursive

framework that sees marriage as serving a two-fold purpose, marriage as 1) an outlet and moral

alternative to zinā and other forms of illicit and sinful sexual behavior and 2) an institution

which safeguards the existence of the next pious generation. The community, however small,

must be a pious one for it acts as a cradle in which the metaphysical heart is nurtured in and

through which it can increase its chances of soteriological success. It is assumed that for most

people, the *qalb* stands little chance of success if its social relations are dysfunctional both on

pietistic and material grounds. Ailments like mental illness, sexual disability or even religious

incompatibility (like in the case of apostasy, or some forms of interfaith marriages) pose a

serious dilemma for the preservation of Muslim marriages (from breakdown) whose

institutional teleology is 1) protection from sexual vice. This requires that sex be easily

accessible in marriage; and a pious and virtuous spouse who, ideally, is assumed to behave

better in marital relations and hold a positive effect on the latter's overall piety; 2) a means for

self-building by instituting patience (*ṣabr*) and altruism (towards the spouse) in the Muslim

subject which are necessary for the growth of *īmān* and 3) the creation of pious offspring that

continues the existence and piety of the next generation - the success of which requires a

healthy relationship between two pious parents who stand as proper examples and transmitters

of the virtuous and pious life. Just like spiritual diseases are transmitted generationally, so are piety and proper religious dispositions.

This introductory platform in Imāmī marriage law is nearly standard to the whole of the legal tradition. Much of the controversy is generated through tensions between the meaning of the collective body of legal source-texts on marriage and what jurists subjectively think would promote the salvation of Shīʿī Muslims. Although presented in a highly formalized and seemingly detached manner, legal discussions on marriage are in reality an attempt to fashion a soteriological moral order of what they see as the most important institution in human social life. It may seem at times that the legal conclusions are the result of positions deduced from the "natural" direction to which the legal evidence leads to, but it is often the case that the evidence at hand is carefully managed and construed in order to meet a salvific demand, especially when the source-texts are unclear or contradictory.[199] In fact, binding legal and moral principles/maxims (*qawāʿid*) are created in the law in order to fail-safe some source-text inspired conclusions from challenging communal integrity (as the jurists understand it) and the salvific teleology of the law.  In short, when it comes to salvation, juristic conclusions are already set and the jurist's task is to reconcile the evidence from the source-texts with an *a priori* position.[200]

---

[199] There are of course other considerations that may not *directly* pertain to salvation per se. Imāmī jurists, particularly beginning in the 9th-10th century C.E, attempted to create a coherent set of theological and legal doctrines that could, for the most part, set them apart from other religious trends at the time. This will to create a self-contained *madhhab* often led to the creation of normative positions within the tradition that made them more or less distinct from other *madhhabs*. This *madhhab*-wide project involved, among other things, the creation of systematic and arbitrary mechanisms that filtered out reports that contradicted popular positions ('popular' or *mashhūr* if normativity was not possible.) *Taqīyah* was perhaps the most conspicuous of these doctrinal mechanisms where positions in the source-texts that contradicted normative or popular positions in the *madhhab* were rejected. Although it may be the case that the usage of *taqīyah* was arbitrarily used in order to meet the proselytizing project of the Imāmī tradition, it would, however, not be fair to dismiss it wholesale as a number of these positions (e.g. the legality of temporary marriage) were inspired by the Imāmī community's collective memory of the Prophet and the twelve Imams.

[200] This is by no means a rare occurrence but regular practice across the Muslim schools of law. Behnam Sadeghi makes the case for Hanafi law where jurists first interpreted the law *and then* reconciled their conclusions with

Once the appropriate spouse is chosen, Imāmī law has a series of guidelines that regulate the performance of sex. Mainstream Imāmī law is more permissive when it comes to the types of sex in marriage than mainstream Sunnī law. For example, Imāmī law strongly discourages, but does not prohibit anal intercourse like mainstream Sunnī law does. It also allows, without discouragement, oral sex.

Imāmī law generally discourages intercourse while one is standing up, in a place without a roof, on a beach, when an infant is present or sleeping in the same room. It also discourages sex while one faces, or has one's back towards the *qiblah* (direction for prayers) as it draws the ire of angels. Women are discouraged and even prohibited from prolonging their prayers as an excuse to avoid sex.[201] Imāmīs see sex as an act of worship – a bodily technique for the attainment of piety- and an important factor in one's ontological relationship with God. Traditions in the source-texts state that angels visit couples when they have intercourse and bring about grace (*raḥmah*) in their lives.

Imāmī law often does not distinguish between sex (among married couples) and ritual prayers in terms of their salvific value. In some cases, Imāmīs will even give precedence to sex over meeting the necessary requirements for prayer. For example, it is discouraged that one has sex whilst travelling if there is no water as one would need to perform the major ablution after sex in order to pray. Yet if there is fear that one may sin, then the discouragement is lifted and sex may even become obligatory in this case even if it means that one cannot perform the major ablution that is required for prayer.[202] Married sex may hold the same salvific value not

---

the source-texts. See Behnam Sadeghi, *The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition* (Cambridge: Cambridge University Press, 2013).
[201] Al-Kulaynī, XI, 16; Ibn Abī Jumhūr, III, 310.
[202] Al-Kulayni, XI, 131-132; al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 418. The other alternative would then be to ritually purify oneself with earth (*tayyamum*).

just because it invokes God's grace and mercy, but because sinful behavior, especially sexual sin, can subvert any reward and merit gained through good religious action, including prayer. If prayer is a purifier of the metaphysical heart, sexual vice is its corrupter. Avoiding sin is just as important as performing religious duties. In some cases, Imāmīs deem the former even more important.

In the discursive tradition of Islam, Satan is the primary antagonist of God and the metaphysical heart. Islam holds him to be an intelligent, self-conscious but invisible being. As the head of all the evil jinn or demons, his project is to lead humanity into damnation through whispering evil desires and thoughts in the minds of human beings.  In the Qur'an, his ultimate mission is to deviate humankind and lead them to damnation.[203] Satan's primary arena for doing so is the metaphysical heart.[204] He uses silent and subtle whispering (*waswasa*) to instill corrupting and ungodly desires[205] that run counter to the desires needed for the cultivation of the virtuous self. In a tradition attributed to ʿAlī b. Abī Ṭālib, ʿAlī warns believers to be on guard "against the enemy who secretly penetrates in your hearts and covertly whispers into your ears."[206] In another tradition attributed to the seventh Shīʿī Imām, Mūsā al-Kāẓim (d. 183/799), he is reported to have been asked who a person's archenemy is whom a believer must battle against. Al-Kāẓim replied that it is he "who is nearest to you and yet holds the most enmity towards you." Al-Kāẓim then further clarifies that this enemy is Iblīs (Satan) and is the one who continuously and persistently whispers in people's hearts (*waswās al-qulūb*).[207]

---

[203] Q15:39.
[204] Q114:5.
[205] Q4:119-120.
[206] Al-Sharīf al-Rāḍī, *Nahj al-Balāghah*, 112.
[207] Al-Majlisī, *Biḥār al-Anwar*, I, 157.

The ḥadīth sources further outline the details of Satan's fight against human salvation and the role he plays in instilling and/or inflaming unruly and compulsive sexual desires, particularly in men. The Imāmī tradition holds that Satan detracts women by making them ungrateful to their husbands, take up immodest behavior and dress. He also encourages compulsivity towards luxury goods. Yet the source-texts rarely mention sexual desires for men as a form of female weakness for Satan to exploit. Unruly or compulsive sexual desires are assumed to be largely a problem for men and hence why the "desire for women" as opposed to "desire for men" is the standard theme in so far as sex is concerned in demonic suggestions. Al-Ṣādiq, for example, advises in one tradition attributed to him that if a man sees a woman and becomes sexually attracted to her, he is to immediately have sex with his permanent wife as it would tame his desires and save him from zinā.[208] As al-Ṣādiq explained, married sex in the midst of outside temptations is an indispensable way to ward off Satan from one's *qalb*. In describing Satan's snares, ʿAlī is reported to have said:

> There are three kinds of temptation: the love of women and this is the sword of Satan. The drinking of wine which is his trap and the love of wealth (*ḥubb al-dīnār wa al-dirham*) which Satan uses as his arrow.[209]

In Imāmī thought, arrows and traps are meant to injure and weaken an enemy, whereas the sword is used as the final killing blow. The tradition suggests that Satan's greatest weapon in corrupting humankind is his manipulation of male compulsive desires for women, or more specifically, sexual vice for it represents his final death blow to the *qalb*.

Sexual vice is not only restricted to zinā. There are a number of sexual practices that can take place *within* marriage that can corrupt the hearts of individuals and their offspring.

---

[208] The tradition, like many others like it, is telling as it is not asking a person to have relations with a concubine as marriage is the only outlet for sex for the majority of the community. Marriage is thus the tool of the masses, whereas concubinage is the privilege of a wealthy minority.

[209] Al-Ṣadūq, *al-Khiṣāl*, I, 113. In another tradition, al-Ṣādiq is to have concluded that Satan's "strongest forces" are lust for women and anger, see al-Ḥarrānī, 363, al-Majlisī, *Biḥār al-Anwār*, LXXV, 246.

The worst of these vices in the Islamic and particularly Imāmī tradition is sexual intercourse during a wife's menses (ḥayḍ).

Normative in the Islamic tradition is the prohibition of intercourse during a wife's menses. The ruling encompasses both temporary and permanent wives as well as concubines. Outside of vaginal intercourse, Imāmīs have allowed sexual relations. Some, however, based on obligatory precaution, have prohibited anal intercourse during this time.[210] The action may incur a discretionary punishment in the form of lashes to the husband. A person who considers the act permissible can be excommunicated from Islam as belief in its prohibition is a normative requirement for being a Muslim.[211] Like zinā, one cannot pray with the sweat acquired from having sex during menses.[212]

The prohibition of sex during the menses is primarily based on the Q2:222:

> And they ask you [Muḥammad] about [a woman's] menstruation. Say, "It is a hurt, so keep away from women during their menses, and not draw near unto them until they are [ritually] purified. And when they are purified, God in unto them as God commanded you."

Muslim jurists have outlined many reasons for why the act is prohibited. Some of these pertain to physical effects, such as the engendering of leprosy in offspring or absentmindedness as al-Ghazzālī once stated.[213] Kathryn Kueny states that although men are responsible for "adhering to lawful sexual practices, it is the woman's body that creates the hostile environment that impacts the child's growth and development."[214] There is no evidence, as far as Imāmī juristic discourse is concerned, that this is the case. To the contrary, many Imāmī jurists put the blame

---

[210] See for example Jawād b. ʿAlī Tabrīzī, *Ṣirāt al-Najāt*, 7 vols. (np, nd), VII, 98.

[211] Ruḥ Allāh Khumaynī, *Kitāb al-Ṭahārah*, 4 vols. (Qum: Muʾassasah-yi Tanẓīm va Nashr-i Āthār-i Imām Khumaynī, nd), I, 215.

[212] Many jurists prohibit it based on obligatory precaution, see for example Abū al-Qāsim al-Mūsawī al-Khūʾī, *Minhāj al-Ṣaliḥīn*, 2 vols. (Qum: Madīnat al-ʿIlm, 1410/1989), I, 110; Muḥammad Fāḍil Lankarānī, *al-Aḥkām al-Wāḍiḥah* (Qum: Markaz-i Fiqhī-i Aʾimmah-yi Aṭhār, 1422/[2001-2002]), 95; Waḥīd Khurāsānī, II, 120. Other jurists like ʿAlī al-Sistānī allow prayers in this state.

[213] Kueny, 181.

[214] Ibid., 182.

largely on husbands by making it mandatory that they pay a compensatory fine (*kaffārah*) to

their wives.[215] It is assumed that such sex, and by extension, the spiritual diseases that come

about from such relationships are the product of the husband's compulsiveness that force a

wife into committing the sin. As Judith Tucker notes, the "*fitna* or disorder arising from

uncontrolled lust and illicit sexual interactions do not originate with women per se, but rather

is attributed to some disreputable men, even if is a problem to be solved by restricting

women's movements."[216] Like most sexual sins in juristic literature, males are the majority of

subjects. Even on the bodily level, sex during menses is primarily a male problem as Satan is

thought to "coil around" the male urethra during intercourse with his wife (see the next pages

for the tradition) and not the female reproductive organs.

The bodily effects of sex during menses notwithstanding, the spiritual effects of such

intercourse seems to be the greatest concern among jurists. First, it is the effect of sin, the

corruption of the *qalb* and the subversion of marriage as mode of pious self-fashioning. The

second is the effect on offspring. As seen earlier in chapter one, children born out of zinā may

face a spiritual handicap from reaching higher states of faith and developing a healthy

ontological bond with God. They may also become downright rebellious against God as they

are conceived by three parents, the third being Satan. Similarly, a popular tradition by Ibn

ʿAbbās holds that

> effeminate men and epicenes (*mukhannathūn*, sing. *mukhannath*) are the sons
> of demons. God and his messenger forbade that a man have sexual intercourse
> with his wife during her menses. When he does have intercourse with her
> during her menses, Satan is there before him and she may get pregnant and
> give birth to a *mukhannath*.[217]

---

[215] Among the classical scholars, al-Ṣadūq, al-Ṭūsī, Sayyid al-Murtaḍā, Ibn Barrāj, Ibn Idrīs and Ibn Ḥamzah are of this opinion, see al-Ḥillī, *Mukhtalaf al-Shīʿah*, I, 348.
[216] Tucker, *Women, Family, and Gender in Islamic Law*, 179.
[217] Muḥammad b. ʿAbd Allāh al-Shiblī, *Akām al-Marjān fī Aḥkām al-Jān*, ed. Aḥmad ʿAbd al-Salām (Beirut: Dār al-Kutub al-ʿIlmīyah, nd), 65.

Effeminacy and androgyny is usually understood as the opposite of *muruwwah*. *Muruwwah* is thought to be a cluster of masculine virtues, including bravery, wisdom, honor and spiritual insight. For men, *muruwwah* is an integral part of the cultivation of *īmān* and thus a healthy relationship with God. The *mukhannath* by nature cannot possess *muruwwah* and will therefore be deficient in *īmān* and forever tied to Satan at some level. The problem of intercourse is not restricted to male offspring, but encompasses both male and female. In describing the origins of the *nawāṣib* (people who show conscious enmity to God, the Prophet and his household), a popular Shīʿī tradition attributed to al-Ṣādiq states that such people are conceived either during zinā or during a woman's menses. If the problem of the *mukhannath* does not apply to females, they (can) nevertheless inherit from Satan a state of impiety or enmity towards God's apostles.

The soteriological operation of sin in general, including sexual vice in particular, brings about demonic possession[218] and its effects are generational. In a tradition attributed to ʿAlī, he states that

> They have taken Satan as the commander of their affairs and he has taken them as his partners. He has laid eggs and hatched them in their bosoms and crawled into their laps until he sees through their eyes and speaks through their tongues. He thus beautifies their sinful deeds to them like the act of one whom Satan makes a partner in his kingdom, speaking falsities through the tongue.[219]

The subject of Satan possessing a person's body is controversial in the Imāmī tradition, but there is general agreement that he can weaken a person's will and saturate his/her mind with his influence, thus manipulating conscious and unconscious decisions. Although Satan's presence is pervasive and his whispers unceasing, Satan does enter deeper into the metaphysical heart through spiritual wounds or openings caused by sin. The wound which

---

[218] For an anthropological and ethnographic account of gender and *jinn* possession, see Celia E. Rothenberg, *Spirits of Palestine: Gender, Society and Stories of the Jinn* (Lanham: Lexington Books, 2004).
[219] Al-Sharīf al-Rāḍī, *Nahj al-Balāghah*, 53.

Satan enters into humans are most often wounds created by sexual vices. As the source-texts show, through these wounds, Satan can also attach himself to reproductive organs and bring about demonic offspring in human form. This does not mean that human souls and the possibility of redemption is absent in these children, but it does mean that they are born with an ontological handicap and disadvantage where they are much more prone to Satan's influence, immorality and rebellion against God.

As Satan's influence is omnipresent even during conception and birth, Muslims are encouraged to take preventative measures to decrease the influence of Satan on the *qalb* of the next generation. For example, during sexual intercourse, Muslims are advised by the Prophet to say "In the name of God, protect me from Satan and protect what you bestow on us [i.e. offspring] from Satan."[220] In another tradition attributed to the Prophet, Muslims are warned that "if a man has intercourse with his wife and does not invoke God's name, Satan coils around his urethra and has intercourse along with him."[221]

Even at birth, Muslims are encouraged to recite the call to prayer in a newborn's ear in order to ward off the Devil's influence. Satan's presence and influence increases when the normative Muslim is not conscious of God at all times thus meaning that the cultivation of the pious self is an on-going and perpetual process. Sexual vices are acts which distance God from the heart, potentially breaking its ontological bond with him and thus creating a vacuum for Satan to fill. In this vacuum, Satan not only take control of a person, but he possesses his/her offspring as well. In order to find salvation from sexual vice, one is not only encouraged and obligated to marry, but to be mindful of how one performs sex in marriage.

---

[220] Al-Ḥarrānī, *Tuḥaf al-ʿUqūl*, 12; al-Majlisī, *Biḥār al-Anwār*, LXXIV, 66.
[221] Al-Shiblī, 65.

## 2.3: INTERFAITH MARRIAGE

In addition to the act of sex, the influence of the person whom one chooses to marry is soteriologically operative. The possible religious conflicts between couples notwithstanding, Imāmī tradition holds that the wrong spouse can deviate a person and children from the correct religious path. As one's creed is corrupted, so is the possibility of having one's metaphysical heart corrupted. A healthy *qalb* not only depends on healthy action, but it also requires a healthy marital environment that is guided by orthodoxy and correct doctrine. Yet at the same time, some Imāmī jurists debate, if there is no one of the right faith to marry, should one settle with zinā or choose the lesser of two evils? Like many disagreements in Imāmī marriage law controversy, although at the surface marriage with non-Imāmīs is a question of legal technicality, the discussion often unravels as a problem of salvation and choosing the lesser of two evils. Choosing the lesser of two evils in Imāmī law becomes a matter of Commanding the Good and Forbidding Evil. Interfaith marriage in Imāmī law therefore finds its controversy in soteriology above all else.

<div align="center">***</div>

Interfaith marriages can be summed up into two categories in Imāmī law, 1) marriage between Imāmī Muslims and non-Muslims and 2) marriage between Imāmī Shīʿī Muslims and people of other Muslim denominations. Typical of Imāmī marriage law, conflicting legal positions are not so much about the strength of their evidentiary value from the source-texts but more so for their soteriological imports.

All schools of law, as a normative rule, prohibit marriage between Muslim women and non-Muslim women.[222] Marriage between Muslim men and non-Muslim women is not without controversy. Muslim men are not allowed to marry non-Kitābī women but some jurists allow them to marry Kitābī women. In Imāmī Shīʿīsm, Kitābī is usually in reference to Jews and Christians. The inclusion of Zoroastrians and Sabians[223] is a matter of dispute. Most Imāmī jurists forbid permanent marriage with Kitābīs. Only a minority permit the marriage.[224] For most jurists, if a man converts to Islam while married to a Kitābī, the marriage will remain intact even for those who forbid the marriage in the first place. For a female convert however, the marriage is dissolved automatically (*faskh*) unless her husband converts along with her.

The minority of jurists who allow marriage with Christian and Jewish women do not, for the most part, give unreserved permission. They do so with hesitation and argue that it is a disliked and reprehensible act (*makrūh*) even if it is permissible. At first glance, the "reprehensibility" of the act seems to be the natural result of a legal principle of source-text

---

[222] The modernist Sunni scholar Khaled Abou El Fadl believes marriages between Muslims and non-Muslims (Kitābīs) in the West is reprehensible (*makrūh*) but still permissible as a general rule irrespective of gender. He thus concludes that Muslim women may indeed marry non-Muslim men. See "On Christian Men Marrying Muslim Women," *Scholar of the House*, accessed April 12th, 2015, http://scholarofthehouse.org/oninma.html. The Sunni Iraqi scholar ʿAbd Allāh ibn Yūsuf al-Judayʿ believes that early evidence contradicts the standard positions of the legal schools, see *Islām Aḥad al-Zawjayn wa-Madā Taʾthīrihi ʿalā ʿAqd al-Nikāḥ: dirāsah fiqhīyah mufaṣṣalah fī ḍawʾ nuṣūṣ al-Kitāb wa al-Sunnah* (Leeds: Al Juday Research & Consultations, 2004). None of these positions, however, reflect the standard and normative position of the schools of law, non-Imāmī and Imāmī alike. For non-Imāmī consensus, see Muḥammad ibn Aḥmad al-Qurṭubī al-Andalusī, *Sharḥ Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid: wa-bi-hāmishih al-Sabīl al-murshid ilā Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, 4 vols., ed. ʿAbd Allāh ʿAbādī (al-Azhar [Cairo]: Dār al-Salām, 1995), IV, 1331.
[223] Unlike Zoroastrians, the identity of the Sabians is in question. For a detailed discussion on the matter, see Taymaz G. Tabrizi, "Ritual Purity and Buddhists in Modern Twelver Shi'a Exegesis and Law," *Journal of Shi'a Islamic Studies* 5, no. 4 (Autumn 2012): 455-471.
[224] For premodern jurists, see for example al-Ṣadūq, *al-Muqniʿ*, 308; al-Ṭūsī, *al-Nihāyah fī Mujarrad al-Fiqh wa al-Fatāwā* (Beirut: Dār al-Kutub al-ʿArabī, 1400/1980), 457; al-ʿĀmilī (al-Shahīd al-Awwal), *Ghāyat al-Murād fī Sharḥ Nukat al-Irshād*, 4 vols., ed. Riḍā Mukhtārī (Qum: Intishārāt-i Daftar-i Tablīghāt-i Islamī, 1414/1993), III, 79-80. For modern jurists who have followed this line, see for example Mūsā Shubayrī Zanjānī, *Risālah-yi Tawḍīḥ al-Masāʾil* (Qum: Intishārāt-i Salsabīl, 1430/2009), 517; Husayn Waḥīd Khurāsānī, *Tawḍīḥ al-Masāʾil* (Qum: Madrasah-yi Imām-i Bāqir, 1428/2007), 497.

reconciliation in Imāmī legal theory.[225] A deeper look into juristic reasoning reveals that there

is more to this ruling than a strictly legalistic and mathematical consideration of the source-

texts. A case in point are the two differing positions expressed by Shaykh al-Ṭūsī. Al-Ṭūsī is

worth special attention as he is the founder of systematized Imāmī scholasticism. His

systematic work on both Imāmī law and doctrine formed much of the precedents, frameworks

and backbone in which the later Twelver tradition built itself on. Despite later criticisms of

some of his work (particularly his so-called "inconsistencies,") much of Imāmī law

nevertheless continued to work under his shadow and aligned itself with most of his legal and

doctrinal affirmations. The jurists (either before or after al-Ṭūsī) who allowed marriage with

Kitābī women were mostly in line with his outlook on the law.

Initially, al-Ṭūsī had prohibited marriage with Kitābīs in an absolute sense as the

Qur'an forbids it with polytheist women (Q2:221) which for al-Ṭūsī was inclusive of Jews and

Christians for they are not true monotheists.[226] In his later work, Q2:221 lost most of its power

of consideration in an apparent change of opinion. Here, although as an *initial* legal premise al-

Ṭūsī did not allow permanent marriage with Jewish or Christian women, he qualified the ruling

(through a secondary order imperative, *al-ḥukm al-thānawī*) by stating that the marriage would

be permissible under necessity (*ḍarūrah*)[227] whereas earlier on his tone suggested that the

prohibition was absolute and unqualified. "Necessity" is primarily in reference to the

likelihood of sin, which for Imāmī law, is the greatest of harms (*ḍarar*) and the main driver of

---

[225] The principle states that if there are contradictory messages given by the source-texts where in one instance an act is permitted whereas in another it is not, one may deem the act - in light of the principle of source-text reconciliation (*jamʿ*) - as permitted but reprehensible as the source-texts that forbid the action (in juxtaposition to those that allow it) indicate a dislike of the act but not a legal prohibition.

[226] al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 296.

[227] Al-Ṭūsī, *al-Nihāyah*, 457.

*ḍarūrah*.[228] In other words, if Muslim women are available to a man, then a man may not marry a non-Muslim woman or at the very least - for those who take a slightly more lenient position - it would be a reprehensible act. Yet if he is put in a condition where he cannot marry a Muslim woman (for whatever reason), then based on the principle of Commanding the Good and Forbidding Evil (of which *ḍarūrah* is an effect of) he may be allowed to marry a Jewish or Christian woman if his inability to marry otherwise might lead him to zinā or other forms of sexual vice. Despite the uncompromising nature of his initial position, concerns for Forbidding Evil and salvation were powerful enough to shift his conclusion.

Al-Ṭūsī's position on the matter was by no means the first but he is nevertheless to be credited with popularizing it and making it nearly standard. His view is primarily taken from an earlier Imāmī predecessor, al-Shaykh al-Ṣadūq (d. 381/991-992), who offers a better insight into the thinking of al-Ṭūsī. Al-Ṣadūq warns about the deleterious effects of Kitābī wives on the piety of Muslim men. If a Muslim man has no other choice but to marry one, then he is at the very least to forbid her from drinking wine and eating the flesh of swine.[229] Al-Ṣadūq's warning and its subsequent popularization by al-Ṭūsī demonstrates that marriage and sex are soteriologically operative on two grounds. The first dilemma is the question of children. It is assumed that a child born out of marriage where the mother does not partake in Islam may impart an erroneous faith upon the child, or at the very least, confuse the child and thus put his/her piety at risk. Unlike concubines or temporary wives, a husband cannot use

---

[228] See for example Miqdād b. ʿAbd Allāh al-Suyūrī, *Kanz al-ʿIrfān fī Fiqh al-Qur'ān*, 2 vols. (Qum: n.p, n.d), II, 177; ʿAlī b. Ḥusayn al-Karakī (al-Muḥaqqiq al-Thānī), *Jāmiʿ al-Maqāṣid fī Sharḥ al-Qawāʿid*, 13 vols., ed. Gurūh-i Pazhūhish-i Muʾassasah-yi Āl al-Bayt (Qum: Muʾassasah-yi Āl al-Bayt, 1414/1993), XII, 371; Al-Shahīd al-Thānī, *al-Rawḍah al-Bahīyah*, V, 197; Muḥammad b. ʿAlī al-Mūsawī al-ʿĀmilī, *Nihāyat al-Marām fī Sharḥ Mukhtaṣar Sharāʾiʿ al-Islām*, 2 vols. (Qum: Daftar-i Intishārāt-i Islāmī, 1411/1991), I, 162.

[229] Al-Ṣadūq, *Majmūʿah Fatāwā Ibn Bābūyah*, ed. ʿAbd al-Raḥīm Burūjirdī and ʿAlī Panāh Ishtihārdī (Qum: n.p, n.d), 111.

contraception, that is, he cannot withdraw (ʿazl) without the permanent wife's prior permission even if she is Kitābī.[230] As such, bearing children is a real risk and so is the likelihood that the child may deviate from what the jurists see as *al-ṣirāṭ al-mustaqīm* and hence possibly jeopardizing the future piety and salvation of the community. The second dilemma is more so of a private problem between husband and wife. Spouses are said to spiritually benefit from each other's pietistic aura (*ḥaybah*) and overall relations, both sexual and non-sexual and they mutually participate in the construction of the pious and virtuous self. As Foucault argues, the technologies of the self can be affected by the help of others.[231]  Put differently, the relationship is not merely of legal significance, but it is an ontological one. As no act in Imāmī law is outside the periphery of divine law and discipline, all human activity has a legal status (*al-mawqif al-ʿamalī*). The reciprocating wife, from her stand point, does not, by virtue of her non-acceptance of Islam, participate in the larger choreography of divine discipline and thus deprives the husband of a helpful partner in salvation in his fashioning of his pious self.

It is also not permissible for a man or a woman to marry a *nāṣibī*, that is, someone who shows enmity to one or more of the Shīʿī Imams or someone who rejects the Imāms whilst knowing the 'truth'.[232] Marriage between Imāmīs and Muslims of other sects (who are not *nāṣibīs*) is mired in controversy and it is in this controversy that the true salvific aims of Imāmī jurists comes to light. All jurists agree that an Imāmī man can marry a non-Imāmī Muslim

---

[230] Or at the very least, it is reprehensible where following the recommended letter of the law can incur divine reward. See al-Shahīd al-Thānī, *al-Rawḍah al-Bahīyah*, V, 101-103. One should not take *karāhah* lightly as many jurists, despite ruling such, still believe that withdrawal without the permanent wife's permission may incur a blood-money (*dīyah*) of ten dinars, see ʿAlī Panāh Ishtihārdī, *Madārik al-ʿUrwah*, 30 vols. (Tehran: Dār al-Uswah, 1417/1997), XXIX, 144.

[231] See fn. 54.

[232] Mohammad Ali Amir-Moezzi lists various definitions which are equally applicable. He states "In the technical Shiʿi lexicon, this latter [*nāṣibī*] is designated the adversary of ʿAlī (or someone who does not recognise ʿAlī's superiority over the other Companions), the enemy of all the *ahl al-bayt*, or, in a more general fashion, the adversary of the Shiʿis." see *The Spirituality of Shiʿi Islam: Beliefs and Practices* (London & New York: I.B Tauris, 2011). For most of Imāmī law and creed, knowingly rejecting the Imāms is also *naṣb*.

woman as she presents no tangible danger either for the man or his offspring given the latter's

status as a Muslim. If anything, Imāmī jurists believe that marriage with them may prove

fruitful as non-Imāmī Muslim wives often convert to Shīʿism. But the dominant view prohibits

marriage with non-Imāmī men, particularly with Sunnīs (or proto-Sunnīs). Three major

traditions are used to support this view. In one report attributed to the Prophet, it is said that

"the faithful (*muʾminūn*) are a match for one another."[233] Another tradition states that

> If someone comes to you [as a suitor] where you are satisfied with his manners
> (*khulq*) and his piety (*dīn*), then marry him to [your daughter.] If you do not do
> so, then you have sowed strife and corruption on the earth.[234]

Another tradition attributed to al-Ṣādiq states: "a woman who is intimate with the Truth

(*ʿārifah*) does not settle with anyone except with a man who is [also] intimate with the Truth

(*ʿārif*)."[235] The most telling of the traditions used is one attributed to al-Ṣādiq which states "a

woman will take her religious mannerisms from her husband for he subjects her to his beliefs

and practices (*yaqharuhā ʿalā dīnihi*.)"[236] The jurists who have prohibited marriage with non-

Imāmīs have understood the terms *dīn*, *īmān, ḥaqq* within the framework of *walāyah*. *Walāyah*

is a special term designated for Imāmī Shīʿīs who partake in a relational web of devotion with

God, the Prophet and his Household (Ahl al-Bayt). The latter consists of the prophet's

daughter Fatima and the twelve Imams.[237] Non-Imāmīs are believed to be outside the fold of

---

[233] Al-Kulaynī, X, 604; al-Ṣadūq, *Man Lā Yaḥḍuruhu al-Faqīh*, III, 393; *ʿUyūn Akhbār al-Riḍā*, I, 289; *ʾItiqādāt al-Imāmīyah* (Qum: Kungrih-yi Shaykh-i Mufīd, 1414/1993), 111; *al-Muqniʿ*, 520; *ʾIlal al-Sharāʾiʿ*, II, 587; al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 398.

[234] Al-Kulaynī, X, 630; al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 394-396; al-Ṭabarsī, *Makārim al-Akhlāq*, 205; ʿAlī b. Mūsā ibn Tāwwūs, *Fatḥ al-Abwāb Bayn Dhawī al-Albāb wa Bayn Rabb al-Arbāb*, ed. Ḥamid Khaffāf (Qum: Muʾassasat Āl al-Bayt, 1409/[1988-1989]), 143; Ibn Abī Jumhūr, II, 274; III, 339, 340.

[235] Al-Kulaynī, X, 640; Ibn Abī Jumhūr, III, 339.

[236] Al-Kulaynī, X, 633, 636; al-Ṣadūq, *Man Lā Yaḥḍuruhu al-Faqīh*, III, 408; *al-Muqniʿ*, 307; *ʾIlal al-Sharāʾiʿ*, II, 502; al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 304; *al-Istibṣār fī-mā Ikhtalafa min al-Akhbār*, 4 vols., Ḥasan al-Mūsawī al-Khirsān (Tehran: Dār al-Kutub al-Islāmīyah, 1390/1970), III 184; Ibn Abī Jumhūr, III, 341.

[237] Amir-Moezzi understands *walāyah* as a devotional web that is essentially esoteric. *Walāyah* thus forms a dual conception of the world in which *nubuwwāh* or "prophethood" stands as the exoteric and letter of divine revelation whereas *walayāh* stands as its spirit and esoteric aspect. See "Notes on Imāmī Walāya," in *The Spirituality of Shiʿi Islam*, 275.

*walāyah* and hence deprived of the possibility of full proximity with the divine as well as establishing a full ontological bond with God. If a woman marries a non-Imāmī, the jurists fear that she may be compelled or influenced to the degree that she would leave Imāmism for a "lower grade" of Islam. Just as important is the concern for the pietistic purity of an Imāmī woman's children whose father follows a problematic form of Islam and may influence his children to adopt his version of the faith. A minority of jurists have allowed Imāmī women to marry non-Imāmī men on the idea that the usage of *īmān* in the textual sources is in reference to generic Islam and not *walāyah/*Shīʿīsm.[238] However, those who allow this marriage are emphatic that the non-Imāmī husband must be a simpleton (*mustaḍʿaf*) and not hostile to Shīʿīsm.[239]

A key question at this point is the degree to which the signification of the source-texts influences the legal positions of the jurists. Although important in their own right, an equal, if not more important factor influencing juristic decisions are what the scholars of law believe to be the necessary welfare (*maṣlaḥah*) of individuals, the believing community and the common good which, in its ultimate purpose, translates into the salvific welfare of the *ummah*. As seen earlier, *maṣlaḥah* is a derivative of the theological principle of Commanding the Good and Forbidding Evil.

A good case in point is Abū al-Qāsim Khūʾī's (d. 1992) famous change of opinion on Imāmī/non-Imāmī marriages. Khūʾī is often thought as one of the greatest Imāmī jurists of the twentieth century and his jurisprudential method is the method most popularly followed by many of the higher ranking jurists (*marāja*ʿ, sing. *marja*ʿ) in the Imāmī world today. Having

---

[238] See for example al-Ḥillī (al-Muḥaqqiq al-Ḥillī), *Mukhtaṣar al-Nāfiʿ*, I, 180.

[239] Al-Ḥillī (al-Muḥaqqiq al-Ḥillī), *Sharāʾiʿ al-Islām*, II, 244; Muḥammad Bāqir b. Muḥammad Muʾmin al-Sabzawārī, *Kifāyat al-Aḥkām*, 2 vols. (Isfahan: Intishārāt-i Mahdavī, n.d), II, 160.

studied all the source-texts on the subject, Khū'ī had concluded that marriage between Twelver

Shī'ī women and Sunnīs was permissible. Yet after a number of complaints that Sunnī

husbands in Iraq were converting their Shī'ī wives to Sunnism, a horrified Khū'ī, reading the

same sources he did before, took a different path and qualified the permissibility of allowing

marriage with Sunnī or non-Imāmī men. In his concern for the salvation of Shī'ī women, Khū'ī

argued that although marriage with non-Imāmīs in its initial premise was permissible, it was

still reprehensible (*makrūh*) and it was best – although not obligatory – that Shī'ī women

abstained from the practice. However, in a new ruling that had little historical precedent, Khū'ī

argued that if there was fear that the wife could be deviated as a result of the marriage, then the

marriage was forbidden (*ḥarām*).[240] Khū'ī's introduction of this uncommon position suggests

that what the source-texts may "signify" in and of themselves can only go so far. What stands

as the prime driver of marriage law are the juristic biases for salvation where most standard

laws, if salvific welfare calls for it, may be qualified or fully controverted. Khū'ī's radical shift

in opinion - just like his predecessor al-Ṭūsī almost a millennium ago - was a continuation of a

long tradition of putting into practice the inversion of first order imperatives when the

salvation of the self and the community was at stake.

The controversy of interfaith marriage can thus be summed up as follows: the most

direct problem are the religious influences that spouses, especially men of other faiths may

have on the Shī'ī partner and the offspring that may come about from the marriage. This

negative influence comes about in two ways, the first is the problem of imparting unorthodox

beliefs to the spouse and children. The second is one's spiritual or ontological influence on the

---

[240] Abū al-Qāsim al-Mūsawī al-Khū'ī, *Minḥāj al-Ṣaliḥīn*, 2 vols. (Qum: Madīnat al-'Ilm, 1410/1989), II, 271. Khū'ī's qualified prohibition of marriage with non-Imāmīs had little precedent in Imāmī history. Among the classical jurists before al-Ḥillī, only al-Ṭūsī is known to have held the view, see Ja'far Subḥānī, *Niẓām al-Nikāḥ fī al-Sharī'ah al-Islāmī al-Gharrā'*, 2 vols (Qum: n.p, n.d), II, 10.

spouse through a problematic aura that may weaken one's Shīʿī resolve and participation in the ontological field of *walāyah*.

The second problem is the assumption that interfaith marriages are likely to lead to marital breakdown. The Imāmī juristic insistence on choosing the right spouse of the right faith is also to prevent, as much as possible, marital conflict or divorce. Increasing the likelihood of marital conflict and divorce through interfaith conflict also increases the likelihood of sexual vice, either intra-marital or extra-marital.

## 2.4: PREPUBESCENT MARRIAGE

Marrying within the faith is not immune to soteriological problems. Not all Shīʿīs are considered to be worthy spouses. A Shīʿī, like a non-Shīʿī, can be a sinner and immoral. A Shīʿī can also be from a different social status, or have such age gap with his/her spouse that may raise issues of incompatibility and thus result in a conflict ridden marital life and possible divorce. Of all the legal problems in marriage incompatibility among Shīʿīs, the most ubiquitously discussed is the legality of marriage with prepubescent spouses. The large space devoted to this subject is largely the result of an Imāmī milieu where a large pool of boys, and especially young girls, were being married at relatively young ages. As evidenced by the Imāmī discussion of *mafsadah* (ruin/harm) in prepubescent marriages, young marriage ages, particularly when there were significant age gaps, did pose problems of marital breakdown due to the incompatibility it often produced or the potential mental and bodily damage that could come about through sexual intercourse. If jurists devoted a large amount of space to discuss tips on marital health, it is because they wanted to avoid the sins that marital conflict often produced, such as marital recalcitrance or *nushūz* (see chapter four) or high rates of divorce

which threatened to open the doors to the dreaded sin of zinā and other sexual vices. Marriage had to remain a technology of the self, and if first order imperatives had to be inverted, then that is what would happen.

***

Most Imāmī scholars state that a boy reaches full maturity at the completion of the fifteenth lunar year[241] unless indicators for puberty show beforehand (e.g. nightly emissions.) For girls, the dominant position states that it is the completion of nine lunar years, unless indicators of puberty show beforehand (e.g. menstrual bleeding.) How strictly one should adhere to these two set numbers is unclear as the source-texts are nowhere near unanimous as to what constitutes puberty. As such, jurists like al-Fayḍ al-Kāshānī state that as far as fasting (ṣiyām) is concerned, girls become mature at thirteen years of age.[242] Modernists like Yūsuf Ṣāniʿī see thirteen as the overall age of puberty.[243] Other jurists do not stipulate a specific age but claim that it is a mixture of human biology and cultural relativity.[244] Whatever the moment of puberty may be, prepubescent marriages presents one of the prime cases (like divorce in chapter five) where soteriological concerns may override an otherwise uncontested exercise of male power over his family.

After Iran's Islamic Revolution in 1979, Ayatullah Rūḥ Allāh Khumaynī's scholarly publications came to greater light. Of particular prominence was his *Taḥrīr al-Wasīlah* (and its Persian translation) which was a summary of some of his legal considerations (but not necessarily his fatwas or final legal verdicts). Up until that time, few Shīʿī laymen and

---

[241]See al-Najafī, *Jawāhir al-Kalām*, XXVI, 16.

[242] al-Fayḍ al-Kāshānī, *Mafātīh al-Sharāʾi*, I, 14.

[243] See his short treatise on female puberty, Yūsuf Ṣāniʿī, *Bulūgh-i Dukhtarān* (Qum: Maytham-i Tammār, 1385 H.Sh/2006).

[244] This position is famously held by the semi-reformist jurist Muḥammad Buzhnūrdī.

laywomen had ever read a treatise on Imāmī law. Although much of its contents was nothing out of the ordinary, a few passages, however, irked and horrified many of his lay readers even though these same passages had over a thousand years of juristic precedent. No passage elicited more discomfort and controversy than his permitting of sexual relations with non-pubescent girls. Khumaynī wrote:

> It is not permissible to have intercourse with one's wife before the completion of nine (lunar) years of age whether the marriage is permanent or temporary. However, other forms of sexual acts (*sā'ir al-istimtāʿāt*, lit. "other forms of deriving pleasure") like sensual touching, embracing or placing one's penis between her thighs (*tafkhīdh*) is permissible even if she is still being breastfed (*raḍīʿah*).[245]

Within juristic circles, Khumaynī's position was standard and had much precedent. His peers all wrote the same as it was taken verbatim from Muḥammad Kāẓim Yazdī's (d. 1337/1918) *al-ʿUrwat al-Wuthqā* which, until today, is modern Imāmī law's equivalent of the Jewish *Schulchan Aruch*. The ruling predates Yazdī and is centuries old. It is based on the idea that since the source-texts do not mention the impermissibility of non-penetrative sexual acts with non-pubescent wives (they only mention the impermissibility of intercourse,) then one is to assume that the acts are permissible even if the source-texts say nothing of its permissibility.[246] This tendency is derived from a principle in legal theory which states that "everything is permissible unless explicitly prohibited."

The ruling has a longer, more complicated story. The passage is only stating an unqualified, initial legal premise. This means that it cannot be acted on without further qualification. The first and most important qualifier in the legal texts is the principle of "no ruin/harm" (*ʿadam al-mafsadah*) which acts a secondary order imperative (*al-ḥukm al-*

---

[245] Rūḥ Allāh al-Mūsawī al-Khumaynī, *Taḥrīr al-Wasīlah*, 2 vols. (Qum: Mu'assasah-yi Maṭbūʿāt-i Dār al-ʿIlm, n.d), II, 241.
[246] See al-Najafī, XXIX, 416.

*thānawī*) in final legal verdicts. As a qualifier of minor marriages, it is a normative principle in the Imāmī tradition without a single dissenting voice[247] of which Khumaynī himself accepted.[248] "No ruin" is conceived holistically where there must be no ruin in all aspects of human life; financial, health, reputation (social standing) or anything having to do with salvation. "No ruin" is a sister principle of "no harm" (*lā ḍarar*) and is derived from a famous tradition attributed to the Prophet which states that "there is no harm or reciprocal harm in Islam" (*lā ḍarar wa lā ḍirār fī al-Islām*.)[249] Both are derivatives of the theological doctrine of Commanding the Good and Forbidding Evil.

In *ʿadam al-mafsadah*, there must be no reasonable grounds in which the minor may suffer financially (have his/her property taken advantage of), health wise (physically or mentally) or in terms of his/her social standing where the marriage may ruin his/her reputation in the community. Most important of all, a minor's religious state, piety and ultimate salvation must not suffer either. Marriage is a mode of self-fashioning and should not be a mode for self-destruction. Social harmony, personal wellbeing and salvation go hand in hand as *īmān's* growth is in need of a stable social environment. As discussed earlier,[250] Imāmī jurists believe the greatest *ḍārar* or harm for a Muslim is sin. Zinā and other sexual vices are categorized as one of the greatest of *mafāsid* (sing. *mafsadah*).[251] The inclusion of *mafsadah* (in its holistic sense) in prepubescent marriages indicates the misgivings Imāmī jurists had for allowing the

---

[247] Abū al-Qāsim al-Mūsawī al-Khū'ī, *Mawsūʿat al-Imām al-Khū'ī*, 33 vols., ed. Pazhūhishgarān-i Mūassasah-yi Iḥyā'-i Āthār-i Ayat Allāh al-ʿUẓmā Khū'ī (Qum: Pazhūhishgarān-i Mūassasah-yi Iḥyā'-i Āthār-I Ayat Allāh al-ʿUẓmā Khū'ī, 1418/1997), XXXIII, 229.

[248] Khumaynī, *Tawḍīh al-Masā'il*, 2 vols., ed. Muḥammad Ḥusayn Banī Hāshimī Khumaynī (Qum: Daftar-i Intishārāt-i Islāmī, 1424/2003), II, 301.

[249] Al-Ṣadūq, *Maʿānī al-Akhbār*, 281. For a slightly alternate version, see al-Kulaynī, X, 486.

[250] See fn. 228.

[251] See for example Mūsā Shubayrī Zanjānī, *Kitāb al-Nikāḥ*, 23 vols., ed. Mūassasah-yi Pazhūhish-i Raypardāz (Qum: Mūassasah-yi Pazhūhish-i Raypardāz , 1419/[1998-1999]), VII, 2104. Zanjānī's discussion here is about temporary marriage, yet his understanding of sexual vices as the worst kind of *mafsadah* is quite telling as to what the primary concerns of the jurists are.

marriage in the first place as it presented a greater risk for future marital dysfunction. Dysfunctional marriages in juristic culture were fertile grounds for a whole host of sins; not fulfilling marital duties, neglect of children, despair in God's providence and above all, *zinā* through adultery and its corollaries. Dysfunctional marriages could also lead to divorce, which could open doors to zinā that marriage was meant the close in the first place. As *mafsadah* can fundamentally be an issue of salvation, it is ultimately a subsidiary of the principle of Commanding the Good and Forbidding Evil.

Dysfunctional marriages undermine salvation. The law allows for arbitrary decisions by fathers to marry off their prepubescent daughters to other males (prepubescent or adult). Imāmī jurists, however, acknowledge that such practices may lead to future marital dysfunction. By constructing legal/salvation safety mechanisms like the principle of no-*mafsadah*, Imāmī jurists put a system in place where the father's or any other male guardian's power over the minor (usually a girl) can be inverted in case of soteriological conflict.

The second qualifier of prepubescent marriage is necessary welfare or *maṣlaḥah*. Like *mafsadah*, *maṣlaḥah* is holistic. Although *mafsadah* is a derivative of *maṣlaḥah*, *maṣlaḥah* proper is distinct in that it is a positive qualifier where circumstance may provide the grounds for making the marriage permissible as it would be the lesser of two evils. Without a circumstance that may make the marriage necessary (although not obligatory on the individual to accept), the marriage would not be permissible. Unlike *mafsadah*, *maṣlaḥah* as a qualifier is not normative although most jurists in the modern period - including Khumaynī himself - see it as a necessary component of prepubescent marriage.[252] As *maṣlaḥah* is intimately connected to

---

[252] See for example Khumaynī, *Istiftāʾāt*, 3 vols (Qum: Daftar-i Intishārāt-i Islāmī, 1422/[2001-2002], III, 113; Muḥammad Fāḍil Lankarānī, *Risālah-yi Tawḍīḥ al-Masāʾil* (Qum: n.p, 1426/2005), 420; Muntaẓirī, *Risālah-yi Istiftāʾāt*, 3 vols. (Qum: n.p: n.d), III, 346; Makārim Shīrāzī, *Istiftāʾāt-i Jadīd*, 3 vols., ed. Abū al-Qāsim ʿAlīyān-

the ultimate good, it too is framed as a subsidiary of the theological doctrine of Commanding the Good (*maṣlaḥah*) and Forbidding Evil (*mafsadah*).

Specific examples of what would constitute *mafsadah* and *maṣlaḥah* are quite rare although their usages are ubiquitous. Part of the reason is that the specificities are arbitrary and subjective. Jurists acknowledge that *mafsadah* is ultimately what "human reason" deems morally repulsive (*qabīḥ*).[253] Nāṣir Makārim Shīrāzī (b. 1926) - one of the grand jurists of the modern Shīʿī world - rejects the permissibility of "other forms of sexual pleasure" by stating that the idea itself is morally offensive to human reason (*qubḥ-i ʿuqalāʾī*).[254] For Shīrāzī, this is self-evident to the point that a qualifier is not even needed as human reason (*ʿaql*) can discover the impermissibility of the act in the first place. Put differently, he believes that "human reason" is a positive source of law and may provide the basis for prohibiting "other forms of sexual pleasure." Yet if the argument fails, legal qualifiers may act as final buffers in preventing prepubescent sex.[255]

The modern discomfort behind this reason might explain why *maṣlaḥah* as a qualifier gained greater prominence with modern jurists[256] whereas only a minority of premodern jurists believed it to be a requirement for the marriage's validity. Though a minority, the premodern jurists who included *maṣlaḥah* were apprehensive in allowing marriages at such a young age.

---

nizhādī (Qum: Intishārāt-i Madrasah-yi Imām ʿAlī b. Abī Ṭālib, 1427/2006), I, 249; Jaʿfar al-Subḥānī, *Niẓām al-Nikāḥ*, I, 205.

[253] Taqī al-Dīn Abū Ṣalāḥ al-Ḥalabī, *al-Kāfī fī al-Fiqh,* ed. Riḍā Ustādī (Isfahān: Kitābkhānah-yi ʿUmūmī-i Amīr al-Muʾminīn, 1403/[1982-1983]), 266.

[254] Nāṣir Makārim Shīrazi, *Kitāb al-Nikāḥ*, 6 vols., ed. Muḥammad Riḍā Ḥāmidī and Masʿūd Makārim (Qum: Intishārāt-i Madrasah-yi Imām ʿAlī b. Abī Ṭālib, 1424/2003), II, 135.

[255] Not all cases of prepubescent marriage are between mature adults and minors. Janet Afary shows that a popular form of marriage in nineteenth century Iran were cousin marriages. These cousins had known each other since a young age thus suggesting that in large part, many of the young marriages were between girls and boys who may not have been too distant in age. See Janet Afary, *Sexual Politics in Modern Iran* (New York: Cambridge University Press, 2009), 25.

[256] This is not to discount the modern *uṣulī* emphasis on *iḥṭīyāt* or obligatory precaution when it comes to reconciling conflicting sources. For an excellent study of the Uṣulī-Akhbārī schism in Imāmī law, see Robert Gleave as cited earlier.

*Maṣlaḥah* would be applicable for cases of extreme poverty where parents could not sustain their child, or if a suitable, pious spouse was found and delay in marriage would result in the loss of an ideal partner that could not be easily replaced.[257] In other words, only when facing death from starvation or in the midst of no religiously suitable partners could such a marriage be allowed.

With the presence of either of these qualifiers, the authority of male guardians[258] (father, grandfather etc.) would be revoked, inverted and the marriage would either be rendered completely void or delayed (*al-ʿaqd al-fuḍūlī*) until the minor (usually female) reached full maturity where he/she could decide for himself/herself. I say full maturity as the age of nine or fifteen was not a sufficient condition for maturity in this case given that Imāmī jurists - premodern and modern - also stipulated *rushd* as an additional clause. *Rushd* is in reference to "mental maturity" and power of discernment in matters relating to marriage and/or business transactions or the subject's overall welfare. The clause is important in so far as it suggests that maturity or *bulūgh* is not a single universal standard in Imāmism.

Whatever disagreements the jurists may have held as to what constituted *mafsadah* or *maṣlaḥah*, what was unanimous was the purpose of these qualifiers as subsidiaries of the theological principle of Commanding the Good and Forbidding Evil, namely to protect the pious community from dysfunctional marriages, prevent sin and ensure their salvation. Marriage had to fulfill its teleology as a grounds for cultivating the pious self. Prepubescent marriages imposed on undiscerning spouses, or significant age gaps, although permissible in its initial premise, could be disallowed based on secondary order imperatives if they worked

---

[257] Similar concerns for prepubescent marriage and *maṣlaḥah* are prominent in Sunnī law, see for example Abū Zakarīyah al-Nawawī, *Sharḥ al-Nawawī ʿalā Muslim* (Damascus: Dār al-Khayr, 1416/1996), 550.

[258] I say male guardians as women do not have power of guardianship (*wilāyah*) in Imāmī law when it comes to their children's marriage.

against the teleology of marriage and the soteriological health of the community. The Sharīʿah, in the view of the Imāmī tradition, did not equate to its initial premises or first order imperatives of the law. In the Imāmī tradition, the secondary order imperatives are what characterized the law. The Sharīʿah in the Imāmī view is therefore *al-ḥukm al-thānawī*, not *al-ḥukm al-awwalī*.[259]

## 2.5: CONCLUSION

Marriage is a technology of the self and functions as a program for the cultivation of piety. It is of central significance for the protection of the *qalb* from spiritual corruption and critical for the promotion of soteriological success. For this to be possible, marriage must follow a set of right practices in order to fashion the virtuous self and meet its salvific goals. Within marriage, there are a set of sinful practices, particularly relating to sex, that can lead to damnation and even demonic possession. Sex is therefore not just soteriologically operative outside marriage, but within it as well. As such, sex within marriage is a technique of the body for the development and preservation of piety.

Not all marriages are of equal value when it comes to salvation. As Muslim jurists reason, some marriages are downright detrimental to Muslim piety and are to be prohibited. Interfaith marriages are a case in point. Non-Kitābīs are forbidden to marry. Women are also forbidden to marry males outside of Islam. All this is clear in Imāmī law. The controversy lies in marrying people that the sources are ambiguous about. Can a Shīʿī man marry a Kitābī woman permanently? Can a Shīʿī woman marry a Muslim man that is outside the fold of Twelver Shīʿism? If allowed, what effect will it have on the piety and orthodoxy of the spouse?

---

[259] I would like to thank my good friend Aun Hasan Ali from the University of Colorado Boulder for this insight.

How will one's offspring be affected? Will they still remain Shīʿī? Whatever position that jurists may take, and whatever jurisprudential reasoning they adopt goes back to an *a prior* position that vets whether or not such a marriage will be detrimental to the salvation of the communities they live in.

Marriage among Shīʿīs are mired in problems. Not all Shīʿīs are pious, and not all are compatible even if they are pious. A recurring problem in juristic discussions are marriages with under-aged children, particularly when it involves older males and prepubescent girls. The problem is twofold. None of the source-texts prohibit it yet under-aged children are not good decision makers when it comes to choosing a right spouse. The family may choose for the child, but the child's own informed decision is paramount for the success of marriage. The second problem are significant age gaps. Young children, especially girls, may be married off to older men by their fathers (or male guardians) and the age gap may contribute to marital incompatibility and hence dysfunction.

With secondary order imperatives in Imāmī law, the legal dilemmas of marital dysfunction and the problems the dysfunction poses for salvation can be solved. The soteriological effects of these dysfunctions guide much of the juristic discussions on the matter and often override whatever juridical conclusions that may be drawn from the source-texts, including the standard prerogatives of paternal authority in under-aged marriages. When salvation enters the equation, paternal authority can be inverted to the extent that the law may even allow this inversion without the direct supervision or concession of an authorized jurist. The female in question may legally defy paternal authority if she believes defiance will benefit her salvation. Take for example tensions over a daughter's choice of marriage. In normal circumstances, the dominant Imāmī view holds that females (who at the very least, are virgin

and/or were previously unmarried) need their paternal guardian's consent for any marriage to be lawful. If, however, a female (prepubescent or not), having power of discernment and mental maturity, desires to marry a man whom is religiously suitable (*kuf'*, in other words, is a well-mannered pious fellow) and her male guardian (usually her father) forbids the marriage on grounds other her salvation (e.g. he is a sinner), then by law his authority is automatically dissolved and she may marry without his or anyone else's permission.[260]

*Kuf'* features prominently in the law. The mainstream, dominant Imāmī view posits religious compatibility as the primary factor of *kuf'* although economic class[261] or similarity in age[262] can also fall within the framework of *kuf'*.

The teleology of *kuf'* in mainstream Imāmī law holds that the more religiously compatible couples are, the more likely marital success is. This means that they will positively influence each other in observing piety and rearing pious, God-fearing children. The more pious and functional the couple, the less likely they are to commit sins, whether it is zinā, *nushūz*, or some other form of vice that may corrupt the *qalb*. *Kuf'*, therefore, is an essential marker of soteriological considerations in Imāmī law.

The important question that this chapter and the above example raises is the centrality of patriarchy in Imāmī law. As this case study (and others to come) demonstrate, patriarchy, although a ubiquitous part of the law, does not seem to be a necessary and incontestable feature of juristic discourse or in pious self-fashioning. If anything, jurists have no qualms in inverting it for the greater good of saving the metaphysical heart and promoting the virtuous self. As

---

[260] Al-Shaḥīd al-Thānī, op. cit., V, 117.
[261] Ibid.
[262] Ayatullah Vejdani-Fakhr, a prominent jurist and teacher in Qum seminaries subscribes to this view.

such, patriarchy or gendered hierarchy in the Imāmī juristic world is not an essential feature of

the law, salvation is.

CHAPTER THREE

CHOOSING A TEMPORARY SPOUSE IN IMĀMĪ JURISTIC SOTERIOLOGY: THE
MORAL CRISIS OF THE ZĀNĪYAH AND THE MUTʿAH MISTRESS

## 3.1: INTRODUCTION

This chapter will study the salvific telos of temporary marriage in Imāmī law with a particular

emphasis its relation to fashioning the male pious self. A central point of disagreement in

temporary marriage law is the permissibility of contracting it with women (let alone men) who

have committed zinā (*zānīyah*). As I will delineate, the controversy is not hermeneutical

(although it is often presented as such) but soteriological. Temporary marriage is almost

universally introduced as an alternative to zinā. But what happens when the contracting partner

is guilty of zinā? This presents a moral crisis for Imāmī jurists as they need to make a choice

between two problematic alternatives, allowing temporary marriage with a morally

questionable partner who is *assumed* more likely to accept mutʿah or allowing it only with

sexually righteous individuals and thereby limiting the pool of temporary spouses. Figuring out

what is best for the fashioning of the pious self is the crux of the debate.

For the former, the texts almost always assume the subject to be male (i.e. a pious male)

and the object a female. Pious female subjects of mutʿah are rarely a point of discussion as

they are assumed to lack interest in temporary marriage. Their interest is largely geared

towards permanent marriage. A likely reasoning behind this presumption is that temporary

marriage is designed to keep men from zinā for their sexual desires are assumed to be

potentially compulsive. In other words, women's bodies are objects of juristic analysis as they

are potential locations of sexual pathology but they are not, as a general rule, subjects of

compulsive desires themselves. In the few instances where compulsive female desires are

explicitly mentioned, it is under a subsection dealing with female insanity.[263] Compulsive desires in women is therefore the exception and not the rule and hence why some jurists go as far as admitting that temporary marriage is an institution primarily for males for only they may ask for sexual obedience in it but not women.[264] This is opposed to permanent marriage in which sexual obedience to wives can be a requirement after a certain period has elapsed, or if a woman fears sin (especially zinā) thereby making is immediately compulsory for husbands to fulfill the need. Since most men may be subject to compulsive desires and are at greater risk of sexual sins, the available pool of women must be wide enough so that mutʿah may serve its purpose even if it means making zānīyahs (women who commit zinā) permissible for marriage.

Yet for other jurists, the spiritual effects of contracting temporary marriage with morally questionable women is simply too problematic to allow even if it means drastically reducing the pool of available women. Although temporary marriage does not have in its teleology the production of pious offspring, the effect of a temporary spouse's sinful aura and the possibility of children being born out of such a marriage still poses a risk. The debate over source-text interpretation and selection, although important in its own right, is secondary to soteriological considerations and ideas of how the pious self should be cultivated. Allowing temporary marriage with sexual sinners is therefore less of a question of how to best reconcile conflicting traditions, but a question of determining the lesser of two evils and hence Commanding the Good and Forbidding Evil.

---

[263] ʿAllāmah al-Ḥillī, *Tadhkirat al-Fuqahā'* (Qum: n.d, n.p), 610. Al-Ḥillī is not equating female compulsive desires with insanity as the subsection is about marrying insane women in times of need (which is not exclusively about sex.) But the fact that the subject comes up so rarely and is discussed under insanity is still telling as it suggests that sane women, unlike men, are not expected to be overtaken by sexual desires.
[264] Al-Shahīd al-Thānī, op. cit., V, 289.

## 3.2: MUTʿAH AND SALVATION FROM ZINĀ

Mutʿah (lit. pleasure) is a temporary marriage in Twelver Shīʿī law that a married or unmarried man contracts with an unmarried woman in which a specified time of expiration and dowry is stipulated. Once the time limit of the contract is over, the temporary wife must wait forty-five days or two menstrual cycles before she can contract a new marriage with another man. There is no waiting-period for men and most jurists believe that there is no limit as to how many temporary wives a man may hold simultaneously. Only a few jurists believe that that temporary wives fall within the four-count maximum of wives allowed. The traditions available on the subject are contradictory and for this reason, as a matter of obligatory precaution, al-Qāḍī b. al-Barrāj (d. 481/1088) does not allow a man to marry more than four wives regardless of the kind of marriage contracted.[265] Based on a tradition from the eighth Imām ʿAlī b. Musā al-Riḍā (d. 203/818) which insists on observing precaution and counting temporary wives among the maximum four limit of spouses,[266] al-Ṭūsī believes that it is best that one observes "social" precaution although additional wives would still be legally valid (*al-iḥitīyāt dūna al-ḥadhr.*)[267] Zayn al-Dīn al-ʿĀmilī (d. 966/1559), better known as al-Shahīd al-Thānī, understands the tradition more strictly and believes it to legally prohibit the acquisition of more than four wives. He expresses doubts as to the reliability of traditions that allow unlimited temporary wives and as such, the dominant opinion does not settle well with him.[268] To support his reservation against the dominant opinion, he makes reference to his predecessor, al-ʿAllāmah al-Ḥillī, who refused to give a final legal edict (*fatwā*) allowing more

---

[265] ʿAbd al-ʿAzīz al-Qāḍī b. al-Barrāj al-Ṭarablusī, *al-Muhadhab*, 2 vols., Jamʿi az muḥaqqiqīn va muṣaḥiḥīn taḥt-i ishrāf-i Shaykh Jaʿfar-i Subḥānī (Qum: Daftar-i Intishārāt-i Islāmī, 1406/1986), II, 243.
[266] Al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 259; *al-Istibṣar*, III, 148.
[267] Al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 259.
[268] Al-Shahīd al-Thānī, *Rawḍah al-Bahīyah*, V, 209.

than four temporary wives.[269] In a slightly more lenient position, Muḥammad b. Manṣūr b. Idrīs al-Ḥillī (d. 598/1202) believes acquiring more than four temporary wives to be reprehensible even if it is permissible.[270]

Mutʿah may be contracted between a Muslim man and a Muslim woman, or a Muslim man and non-Muslim woman as long as she holds Kitābī status. Unlike permanent marriage, there is little controversy in allowing mutʿah with Kitābī women. Part of the logic lies in the fact that Imāmī law allows contraceptive withdrawal (ʿazl) with a temporary wife regardless of her permission, and hence reducing the likelihood that children would be born out of the relationship. Second, the temporary relationship is assumed to have minimal effects on the husband as his investment in a temporary wife is significantly lighter than a permanent one. For example, a central concern that Imāmī jurists have with Kitābī wives is that by virtue of their non-acceptance of Islam, Kitābī women, as an obligatory precaution, are ritually impure.[271] As a result, there is a possibility that the wife's ritual impurity (either through her own ritual impurity, or at the very least, through her contact with ritually impure foods which would make her outward body ritually impure[272]) would transfer into the husband's food and contaminate him and affect the state of his *qalb*.[273] Food and sex are distinct for some Imāmī jurists as ritually impure foods are consumed and hence difficult to purify oneself from,

---

[269] Ibid; see also ʿAllāmah al-Ḥillī, *Mukhtalaf al-Shīʿah*, VII, 230.

[270] Muḥammad b. Manṣūr b. Aḥmad b. Idrīs al-Ḥillī, *al-Sarāʾir al-Ḥāwī li-Taḥrīr al-Fatāwā*, 3 vols. (Qum: Daftar-i Intishārāt-i Islāmī, 1410/1989), II, 624.

[271] The idea that non-Muslims are ritually impure is not normative in Imāmī law. Even more contested is the idea that Kitābīs are ritually impure as they follow a "divinely revealed faith." For a discussion on the ritual purity of non-Muslims in Imāmī law, see Taymaz G. Tabrizi, "Ritual Purity and Buddhists in Modern Twelver Shiʿa Exegesis and Law," 455-471.

[272] This would be particularly important for those who believe in the ritual purity of Kitābīs.

[273] One Imāmī view holds that ritually impure foods, even if consumed unconsciously, will adversely affect the *qalb*. Another, however, believes the whole process to be psychological. In other words, only by *consciously* embarking in sin one's *qalb* is contaminated for sin is essentially a convention of the mind (*itibārī*). For the latter view, see for example Muḥammad Ḥusayn al-Ṭabāṭabāʾī, *Risālah al-Wilāyah* (Beirut: Dār al-Taʿāruf lil-Maṭbūʿāt, 1987).

whereas sex, even with someone who is ritually impure, only requires that the husband perform the major ablution (*ghusl*) to purify himself. Hence for some Imāmī jurists like Abū al-Qāsim al-Khū'ī, food and sex are "two different matters" (*hādhān mas'alatān mutafariqān*). But as the purpose of temporary marriage is sex and does not include many of the responsibilities of permanent marriage (e.g. providing livelihood (*nafaqah*), mandatory companionship at nights (*qasm*) etc.) the 'insidious' effects of temporary Kitābī wives are believed to be minimal compared to permanent marriage with them. A Muslim woman, as a normative rule in Imāmī law (like permanent marriage), may not engage in temporary marriage with a non-Muslim.[274]


***

Imāmī law holds that mutʿah is a mechanism for controlling sexual vices. More specifically, it is viewed as an outlet for men who may otherwise have uncontrollable sexual desires thus at risk for zinā or other sexual vices. Mutʿah is thus a disciplinary mode of sin prevention.

A common theme in introductory chapters on temporary marriage, both premodern and modern texts of Imāmī law, is the famous tradition attributed to ʿAlī that states: "if Umar had not banned mutʿah, only the wretched would commit zinā."[275] Commenting on Q35:2 "whatever mercy Allah unfolds unto the people, no one can withhold it," the sixth Imam Jaʿfar al-Ṣādiq is reported to have said: "and mutʿah is of that mercy."[276] These traditions, especially the wide usage of the one from ʿAlī serves a dual purpose; it first attempts to establish the licit

---

[274] See the previous chapter on why women are not allowed.

[275] Al-Rāwandī, *Fiqh al-Qur'ān*, 2 vols., ed. Maḥmūd Marʿashī and Aḥmad al-Ḥusaynī (Qum: Maktabat Āyat Allāh al-Marʿashī al-Najafī, 1405/[1984-1985]), II, 106; Ibn Shahr-Āshūb al-Māzandarānī, *Mutashābihah al-Qur'ān wa Mukhālifatihi*, 2 vols. (Qum: Dār Bīdār lil-Nashr, 1369/[1949-1950]), II, 189; ʿAlī b. Muḥammad b. ʿAlī b. Muḥammad . Yūnus al-ʿĀmilī al-Nabāṭī, *al-Ṣirāṭ al-Mustaqīm ilā Mustaḥiqqī* al-Qadīm, 3 vols., ed. Ramaḍān Mikhā'īl (Najaf: Maktabat al-Ḥaydarīyah, 1384/[1964-1965]), III, 273; Ibn Abī Jumhūr, II, 125.

[276] ʿAlī b. Ibrāhīm al-Qummī, II, 207.

nature of mutʿah due to mainstream Sunnī opposition towards its legitimacy. That is to say, temporary marriage was not banned as a result of a Prophetic or divine edict but out of the arbitrary decision of the second caliph.

The second reason why this tradition is so often quoted is to establish one of the main existential reasons for temporary marriage, namely protection from zinā and sexual vice. There is a widespread understanding, either explicit or implicit in Imāmī legal texts that permanent marriage (or concubines) is not available for everyone due to financial constraints. This includes the inability to provide *nafaqah* or "sustenance" in terms of food, clothing and shelter among other things, or the ability to purchase a concubine which may be beyond what the average Shīʿī is assumed to be able to afford. Another tradition popular in the legal texts is one attributed to al-Riḍā where he said:

> mutʿah is fully permissible for one whom Allah has not enriched with the ability to marry permanently so that he may remain chaste through it *(yastaʿfif bi-al mutʿah)*.[277]

Mutʿah therefore becomes a legitimate sexual outlet for males without the financial constraints and difficulties of permanent marriage or slave ownership, especially for those males who may potentially be overcome with uncontrollable desires or urges *(ghalabat al-shahwah)* that put them at risk for zinā.

Despite its stated utilities, some of the corollaries of temporary marriage are cause for concern for Imāmī jurists as they may bring about a serious soteriological crisis. The dilemma that has warranted the most juridical discussion and disagreement is marriage with zānīyahs, namely female perpetrators of zinā which sometimes refers to prostitutes.[278]

---

[277] Al-Kulaynī, XI, 18.

[278] A common term used for a prostitute is *mashhūrah bi-al zinā* or *al-zānīyah al-mashhūrah* (lit. "woman famous for zinā") Some jurists (especially modern) will make a distinction between the former and a zānīyah. They will allow marriage with zānīyahs but forbid it with those who are famous for it (e.g. prostitutes.) Some will also use the word *ʿāhirah* for a non-prostitute who persists in committing zinā. Others will categorize prostitutes as *lahā*

Women contracting temporary marriage with male perpetrators of zinā is believed to be so rare that the jurists give it little room for discussion. "Proper" Shīʿī women are assumed to come from milieus in which there is no need to contract temporary marriage with zānīs (male perpetrators of zinā). To the contrary, they are assumed to come from social networks that would inhibit such a practice. Although such practices do certainly take place, the jurists assume them to be so exceptional and atypical that the subject does not warrant any wholesale discussion. It is men who, fueled by their compulsive sexual desires, are assumed to be willing (and have the power) to go against their social inhibitors and constraints even though they stem from the same communities as female subjects. Men are therefore the real subjects of morally questionable temporary marriages.

There are thus two camps in Imāmī law, one which permits marriage with zānīyahs and the other that prohibits it. Although these views in either camp are also applicable to permanent marriage, what makes temporary marriage unique in this regard is the large attention and detail given to it by jurists and Imāmī source-texts. This of course excludes discussions on permanent spouses who, *during marriage*, commit zinā, but the considerations of this subject are outside the scope of this chapter at the moment and would warrant a separate study.

The vast majority of the traditions on *prospective* marriages with zānīyahs are about temporary marriage and not permanent marriage. The sheer space devoted to temporary marriage with zānīyahs indicates that contracting mutʿah with zānīyahs is more common than

---

*rāyah* (lit. "one who has a banner [over her home]" i.e. a woman who markets herself publicly and invites men to her brothel). *Mashhūrah bi-al-zinā* and *lahā rāyah* are used interchangeably for prostitutes, or at the very least, persistent and open zānīyahs. Yet as far as I have seen, the usage of these terms, their meanings and distinction from zinā seems to be inconsistent and haphazard. There is, however, more consistency with jurists after ʿAllāmah al-Ḥillī, and especially with modern jurists, in terms of distinguishing a zānīyah and a *mashhūrah bi-al-zinā*. See fn. 285 for examples of jurists who make this distinction.

permanent marriage with them. Imāmī jurists assume that pious believers, while showing little inclination for permanently marrying zānīyahs, show less reservation when it comes to temporary marriage as it is mostly a non-binding, short-term commitment even if it is not devoid of potential risks. The jurists believe that zānīyahs - by virtue of their perceived unfaithfulness towards God and/or their potential spouses/children - have little social and religious capital that would make them attractive candidates for permanent marriage for potential husbands and their mediating families. It is therefore in temporary marriage - the central grounds where marriage with zānīyahs takes place in Imāmī law -  that the larger aims of juristic discourse on marriage, zinā and salvation come to light.

### 3.2.1: THE PERMISSIBILITY CAMP

At first glance, the basis for the permissibility or prohibition of mutʿah with zānīyahs depends on what approach one takes in Imāmī legal theory or *uṣūl al-fiqh*. The permissibility camp is one of source- reconciliation where conflicting statements in the source-texts are reconciled through *karāhah*. *Karāhah*, or reprehensibility, is a conclusion that jurists make in the face of two contradictory traditions (or Qur'anic verses, or sometimes traditions and Qur'anic verses) where on the one hand a deed is said to be permissible and on the other it is said to be impermissible. In order to give a wider scope for the acceptance of traditions, many Imāmī jurists opt for reconciling them by arguing that the impermissibility stated in a particular tradition or verse (or group of traditions/verses) is not a legal prohibition but a cautionary reservation against the deed. In short, it is reprehensible but not legally prohibited.

The two major Qur'anic verses that deal with the problem of marrying zānīyahs are Q24:3 and Q4:24. Q24:3 states:

> The zānī does not marry except a zānīyah or a polytheist, and none marries her
>
> except a zānī or a polytheist, and that has been prohibited for the faithful.

The verse is in reference to marriage in general and thus inclusive of temporary marriage; meaning that even in mutʿah, the assumed faithful Shīʿī who, as the normative subject of Imāmī law and the primary addressee in the verse, cannot contract a temporary marriage with a zānī or zānīyah without subjecting himself or herself to damnation. Q4:24 on the other hand states:

> [Prohibited to you are all] married women except those whom your right hands possess[279] [and this is thus] what is decreed to you by God. Beyond these, [all] other women are lawful to you by providing for them some of your possessions while desiring chastity and not sinful intercourse.

The second verse is thought by the permissibility camp as giving no such qualification for its signification (*dalālah*) is absolute thus allowing marriage with perpetrators of zinā.

The conflicting traditions contain more detail and provide the guiding framework as to how the above Qurʾanic source-reconciliation is achieved. In one tradition attributed to al-Ṣādiq, Isḥāq b. Jarīr asked:

> In Kufa there is a woman with us who is known for *fujūr* (zinā). Is it allowed to marry her in mutʿah? Al-Ṣādiq replied: did she raise a banner [notifying the public that she is a prostitute]? I said: No, if she raised [such a] banner, the Sulṭān [or ruler] would have arrested her. He said: yes, marry her in mutʿah. He said: then al-Ṣādiq listened to one of his slaves and confided something to him. So I met his slave and said to him: what did al-Ṣādiq say to you? He replied: he only said to me: even if she had raised a banner there would not be anything against the marriage [for] it only takes her out from the impermissible and in to the permissible.[280]

In another tradition, a companion (ʿAlī b. Yaqṭīn) asks about contracting temporary marriages

---

[279] "Right hands possess" (*'illā mā malakat aymānukum*) is usually understood to be in reference to female slaves. The Muʿtazilites and Kharijites, however, did not permit sexual relations with slaves except through marriage. The famous translator of the Qurʾan, Muhammad Asad (d. 1992), adopted the latter view (given some of his Muʿtazilī inclinations) and translated the verse as: *And [forbidden to you are] all married women other than those whom you rightfully possess [through wedlock]…* See Muhammad Asad, *The Message of the Qurʾan* (London: The Book Foundation, 2003), 123.

[280] Al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 485.

with the women of Medina who are known to be "debauched/immoral" (*fawāsiq*) and the

Imam replies that it is permissible.[281] Similarly, in another tradition attributed to al-Bāqir, he

replies that there is no harm (*la bās*) in marrying a *fājirah* (i.e. zānīyah, lit. "dissolute woman")

if he prevents her from committing zinā (*yuḥṣinahā*).[282] Although this tradition is used by some

jurists of the impermissibility camp, the permissibility camp states that the latter clause in the

tradition is not a condition for the contract's validity (*sharṭ*), it is a separate responsibility

given to the husband where he is to prevent her from zinā.

On the opposite end of the spectrum, there are traditions which prohibit temporary

marriage with zānīyahs. One such tradition asks al-Ṣādiq about the permissibility of mutʿah.

Al-Ṣādiq replied that if she is an *ʿārifah* (a Shīʿī who knows about the rules of mutʿah and is

observant of those rules) then it is permissible. But then he warns:

> and beware of the uncoverers/unveilers and the inviters [to zinā] and the
> prostitutes (*baghāyā*) and the ones with husbands. I said: who are the
> uncoverers/unveilers? He said: those who are uncovered and their houses are
> known in which people come in to [for illicit activity.] I said: and the inviters?
> He said: those who invite [men] to themselves and are known for [sexual]
> corruption. I said: and the prostitutes? He said: the ones who are known for
> zinā. He said: and the ones with husbands? He said: [those who are] divorced
> through other than the Sunna [i.e. triple divorce].[283]

The permissibility camp opted to permit marriage with zānīyahs and prostitutes through

reconciling conflicting reports by suggesting that the apparent *manʿ* (restriction) in the Qur'an

and traditions only indicate *karāhah* and not actual prohibition in the law (*nahī*). In other

words, there is a legal method outlined in Imāmī legal theory which states that if there are two

conflicting statements in the reports and/or verses, one claiming permissibility and the other

---

[281] Ibid, VII, 253; *al-Istibṣār*, III, 144.

[282] Al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 331; *al-Istibṣār*, III, 168.

[283] Al-Kulaynī, XI, 23; al-Ṣadūq, *Man Lā Yaḥḍuruhu al-Faqīh*, II, 459; *Maʿānī al-Akhbār*, 225; *al-Muqniʿ*, 338; al-Ṭūsī, *Tahdhīb al-Aḥkām,* VII, 252; *al-Istibṣār*, III, 143.

prohibition, then the sum result is *karāhah*. Al-Najafī[284] summarizes the permissibility camp's explanation of the Qur'anic verse "forbidding" marriage with zānīyahs as not a *nahī* but expressing a state among believers who, due to their piety, would not incline towards marrying 'lewd' individuals out of pietistic preference. In light of the general signification of Q4:24 as well as the traditions permitting mutʿah with zānīyahs, Q24:3 simply means that pious believers know better and avoid such relationships but if they do enter them, there is no sin upon them.[285]

Preference for reconciliation is only one factor as to why the jurists from this camp allowed temporary marriage with zānīyahs. There are indications, however, that legal theory is only part of the story. The vast majority of the texts that introduce temporary marriage usually start with lengthy polemical histories on the legality of temporary marriage. As it was stated earlier, much of it has to do with mainstream Sunnī (and proto-Sunnī) opposition to the practice. The permissibility and actual practice of mutʿah is not simply a legal matter, but a fundamental question of identity politics for Imāmī Shīʿīsm. This is especially true given how

---

[284] Al-Najaf, XIX, 441-443; XXX, 159-160.

[285] For premodern jurists on its *karāhah*-permissibility, see for example ʿAllāmah al-Ḥillī, *Taḥrīr al-Aḥkām al-Sharīʿah ʿalā Madhhab al-Imāmīyah*, 6 vol., ed. Ibrāhīm Bahādurī (Qum: Muʾassasah-yi Imām-i Ṣādiq, 1420/[1999-2000]), III, 522; al-Karakī, XIII, 16. For modern jurists, see ʿAlī b. Muḥammad al-Ḥāʾirī al-Ṭabāṭabāʾī, *Rīyāḍ al-Masāʾil fī Taḥqīq al-Aḥkām bi-al Dalāʾil*, 16 vols., ed. Muḥammad Bahrihmand, Muḥsin Qadīrī, Karīm Anṣārī and ʿAlī Murwārīd (Qum: Muʾassasaah-yi Āl al-Bayt, 1418/1997), XI, 317. The following jurists believe temporary marriage to be *makrūh* regardless of what kind of zānīyah the temporary wife may be (e.g. *mashhūrah bi-al zinā*, *ʿāhirah*, for details see fn. 278) irrespective of whether or not one prevents her from zinā, see Khumaynī, *Taḥrīr al-Wasīlah*, II, 292; ʿAbd al-ʿAlā al-Sabzawārī, *Muhadhdhab al-Aḥkām*, 30 vols., ed. Muʾassasat al-Manār (Qum: Muʾassasat al-Manār, 1413/1993), XXV, 107. Others make a distinction between zanīyah and *al-mashhūrah bi-al-zinā* where temporary marriage is *makrūh* in the case of the former but is impermissible for the latter as long as the husband in question prevents her from committing zinā (or unless she repents beforehand). Al-Shaykh al-Mufīd (d. 413/1022) and his student Sālār b. ʿAbd al-ʿAzīz al-Daylamī (d. 448/1056) prohibit marriage with *al-mashhūrah bi-al-zinā* unless she repents, see Ṣādiq al-Ḥusaynī al-Rūḥānī, *al-Fiqh al-Ṣādiq*, 26 vols. (n.p, n.d), XXI, 317. For modern jurists, see al-Khūʾī, *Mawsūʿat al-Imām al-Khūʾī*, XXXII, 225; Muḥammad Riḍā al-Gulbāygānī, *Hidāyat al-ʿUbbād*, 2 vols., ed. ʿAlī Thābitī Hamadānī and ʿAlī Hamadānī (Qum: Dār al-Qurʾān al-Karīm 1413/1993), II, 353. On a similar note, see also al-Ḥakīm, XIV, 155; Muḥammad Isḥāq al-Fayyāḍ al-Kābulī, *Minhāj al-Ṣāliḥīn*, 3 vols. (n.p, n.d), III, 24; ʿAlī al-Sīstānī, *Minḥāj al-Ṣāliḥīn*, 3 vols. (n.p, n.d), III, 82.

legal opinions were central in the late Umayyad era in shaping the vast array of legal schools and proto-sectarian identities that, shortly after, fully crystalized into self-contained schools in the tenth and eleventh centuries. Mutʿah, as far as the normative framework of the source-texts and law allowed, must have had as few restrictions as possible. It was "imperative" that Shīʿīs be allowed to contract as many temporary marriages as possible and with the largest pool of women. As Murtaḍā Mutahharī once observed, the basis on why the early Imāms encouraged temporary marriage to such a point was in order to save the "Sunnah" of the Prophet Muhammad so that it may not be "forgotten and abandoned."[286] Temporary marriage was thus central in forming Shīʿīsm as a self-contained school in Islam that wished to legitimize itself by presenting itself as an authentic expression of "original Muhammadan Islam." Mutʿah gave early and later Shīʿīsm two benefits, it allowed it to shape itself as a distinct school separate from mainstream proto-Sunnīsm and Sunnīsm (thus allowing it to flourish on its own grounds) and gave it grounds for positioning itself as the authentic version of Islam by "saving the Sunnah" of the Prophet Muhammad. Therefore, part of the reason why many jurists opted for taking such a lenient position on temporary marriage was because any perceived restrictions on the practice was considered a political affront to Imāmī identity, one which was, for much of history, apologetic in expression.

The *telos* of Imāmī mutʿah expresses yet another greater reason: salvation through the preservation of the pious self. Mutʿah in Imāmism institutionally functions as a preventer of sin and a savior of souls on the Day of Judgment. It is implicitly understood by the jurists that pious Shīʿī women, along with their familial guardians, are largely averse to contracting temporary marriage despite its professed merits. As far as non-zānīyahs are concerned, it is

---

[286] Murtaḍā Muṭṭaharī, *The Rights of Women in Islam*, trans. World Organization for Islamic Services (Tehran: WOFIS, 1418/1998), 54.

mostly divorced or widowed women who are assumed to be willing to be married temporarily. Yet even among them, Imāmī jurists see that many are more interested in permanent rather than temporary marriage. The sheer number of traditions that the jurists have compiled on marriage with zānīyahs - and those stating that one does not need to inquire about temporary wife's past on whether or not she is eligible for marriage (as she might still be in her waiting-period before she can remarry,) - are complicit in the assumption that zānīyahs are the only assured pool of women that can best sustain the functionality of mutʿah and must therefore be permitted at all costs, even as a *karāhah*. Temporary marriage with zānīyahs may adversely affect the pietistic state of the faithful subject and his ontological bond with God. However, zinā and other sexual vices are much greater evils which means that in allowing mutʿah with zānīyahs, the jurists are choosing the lesser of two evils.

## 3.2.2: THE IMPERMISSIBILITY CAMP

There are a number of conflicting reports that forbid marriages with zānīyahs. The most oft used tradition by the impermissibility camp is attributed to Abī Sārah who quotes al-Ṣādiq as having said:

> [mutʿah marriage] is permissible but do not marry except one that is chaste (*ʿafīfah*) as Allah (Exalted is He!) said: *and those who guard their private parts (furūjihim)*, so do not place your private parts in places where your dirham/money is not safe.[287]

Yusuf al-Baḥrānī (d. 1186/1772) suggests that the last part of this tradition can be understood in a number complementary ways. If a person has to be cautious as who one trusts his money with, how can someone trust a morally questionable person with something that is even more important, namely one's genitals which is so central to human salvation? It also means that one

---

[287] Al-Kulaynī, XI, 20; al-Ṭūsī, *Tahdhīb al-Aḥkām*, VII, 252, *al-Istibṣār*, III, 142.

should not trust one's semen with untrustworthy women for what kind of dispositions will the children inherit? How can a believer trust his semen with someone who may commit adultery?[288] The implications of the tradition which al-Baḥrānī touches upon presents the double problem of mutʿah with zānīyahs.

First, who one opts to have sex with will inevitably have a salvific effect on the soul. If one chooses to have sex with a grave sinner, one's piety will be affected as negative spiritual infection will occur; impiety is contagious. Just like sick bodies transmit diseases, sick hearts transmit spiritual diseases (dispositions) to others through sexual intercourse. Second, the community's future salvific well-being is put at risk for how can the next generation of (Shīʿī) Muslims be pious if they are born from zānīyah mothers? Although it is assumed that pregnancies through mutʿah are less common than in permanent marriage, they are still possible. In the impermissibility camp, it is understood that there is credible risk for the pious community even if pregnancies are assumed to be less likely than permanent marriages.

The impermissibility camp has historically been a minority although in recent times, this camp has been steadily increasing. By forbidding mutʿah with zānīyahs with such harsh vigor, these jurists implicitly suggested that the popular stance is immoral and shameful. The earliest, most popular and probably the strictest premodern jurist representing this position has been al-Shaykh al-Ṣadūq. With reference to Q24:3 and the above traditions forbidding mutʿah with zānīyahs and prostitutes, al-Ṣadūq states: "know that whoever contracts mutʿah with a zānīyah is himself a zānī."[289] Al-Ṣadūq dismisses the traditions that permit mutʿah with zānīyahs out of hand by not even including them in the first place. He takes the prohibition in

---

[288] Yūsuf b. Aḥmad b. Ibrāhīm al-Baḥrānī, *Ḥadāʾiq al-Nāḍirah*, 25 vols., ed. Muḥammad Taqī Irawānī and ʿAbd al-Razzāq Muqrim (Qum: Daftar-i Intishārāt-i Islāmī, 1405/[1984-1985]), XXIV, 129.
[289] Al-Ṣadūq, *al-Muqniʿ*, 338.

the texts as real legal prohibitions. Furthermore, as zinā is immoral/shameful (*qabīḥ*), by

calling one who practices mutʿah with a zānīyah a zānī himself, al-Ṣadūq implies that this

practice is not only impermissible but also fundamentally immoral and contrary to the salvific

spirit of Islam and thus contrary to the telos of marriage as a technology of the virtuous self.

The only passage in his writing that suggests some attempt at source-reconciliation is his

quotation of a tradition attributed to al-Ṣādiq stating that one may not marry a zānīyah unless

she demonstrates contrition (*tawbah*) for her sin.[290] Al-Ṣadūq quotes another tradition

attributed to al-Ṣādiq stating that Q24:3 is in reference to *al-mashḥūrāt bi-al-zinā*,[291] (women

famous for zinā) but al-Ṣadūq includes the *mashhūrāt* as part of the larger periphery of zinā

and hence making no legal distinction between the two; zinā is therefore zinā and one may not

marry someone who commits it. This suggests that al-Ṣadūq may have opted for an alternative

form of source-reconciliation in Imāmī legal theory, namely *takhṣīṣ al-ʿām* (qualification of a

general clause) although he does so implicitly without making explicit reference to it.[292] Most

of the traditions that allow mutʿah with zānīyahs usually come with a clause advising men to

restrict and prevent (e.g., *yuḥṣinahā*) women from committing zinā if they decide to marry

them. Al-Ṣadūq goes further to include a clause (taken from traditions) where the zānīyah must

show contrition before marriage.[293] Furthermore, implied in the argument is that Q4:24, which

states a general clause of permissibility, is to be qualified through Q24:3. This form of

reconciliation is not at odds with Q24:3 as contrition means that the contracting partner is no

longer a zānīyah thus making the marriage permissible and morally acceptable.

---

[290] Al-Ṣadūq, *Man Lā Yaḥḍarahuh al-Faqīh*, III, 405.
[291] Ibid. For a discussion on some juristic distinctions between a zānīyah and a *mashhūrah bi-al-zinā*, see fn. 278 and fn. 285.
[292] Standardized usage of *takhṣīṣ* develops in later stages of Imāmī law.
[293] Al-Ṣadūq, 306.

The second early jurist to have prohibited this practice is al-Qāḍī ibn al-Barrāj (d. 481/1088). Ibn al-Barrāj states that contracting marriage with a *fājirah*[294] is not permissible unless he prevents his partner from committing zinā. If he cannot or fails to do so, then there can be no such marriage.[295] Like al-Ṣadūq, Ibn Barrāj understands Q24:3 and the traditions prohibiting mutʿah with zānīyahs as literal although his usage of *takhṣīṣ* is more evident. Ibn al-Barrāj's position is similar to that of al-Shaykh al-Ṭūsī who also stated a similar clause but with an important difference. Al-Ṭūsī writes that there is no harm in a person contracting mutʿah with a zānīyah as long as he, as a condition for the validity of the marriage, prevents her from committing *fujūr*/zinā "after" marriage.[296]

Ibn al-Barrāj on the other hand is more cautious and expects the guaranteed ceasing of zinā to happen before the marriage. However, both of them are in agreement that *manʿ* or prevention comes through contrition (*tawbah*). This point is quite significant as the expectation of *tawbah* means that the prevention is intended to be a permanent and not a temporary measure limited to the time span (*ajl*) of the mutʿah marriage. As with al-Ṣadūq, source-reconciliation is achieved through *takhṣīṣ* and not *karāhah*. A point worth mentioning here is that even if a man were to physically prevent a mutʿah wife from committing zinā on a permanent basis, this still would not be enough as *tawbah* requires a change in one's state of mind.[297] The condition of contrition is really a condition of cognitive and spiritual change. Outward prevention is therefore not enough. For marriage to be soteriologically viable, there must be a change in the *qalb* or metaphysical heart as sex is not simply a material activity.

---

[294] For Ibn al-Barrāj, like most jurists, *fājirah* is synonymous with the generic zānīyah.
[295] Ibn al-Barrāj al-Ṭarablusī, II, 241.
[296] Al-Ṭūsī, *al-Nihāyah*, 490.
[297] Some traditions state that it is enough to "fortify one's door" and prevent the zānīyahs from sinning, but these traditions seem to be dismissed in so far as they do not factor in their final legal conclusions.

Who one chooses to have sex with is soteriologically operative as spiritual states are imparted through sexual activity. In the performance of sex, one participates in the fashioning of the metaphysical heart. Permissible sexual activity through marriage, whether temporary or permanent, is aimed at cultivating the pious and virtuous self.

An important question relevant to this debate is why these jurists opted for this kind of source-reconciliation? Is it because they see this legal tool as jurisprudentially more sound than the one adopted by the historically dominant view, or is there another underlying reason, a sense that such relationships are in and of themselves shameful as they go against the "moral spirit" of the Sharīʿah? In other words, are the legal argumentations and disagreements the tip of a deeper dilemma as to what the most viable legal option is from a salvific point of view? I am inclined to suggest that an important impetus behind this choice is a moral and soteriological one although it may at times be expressed in seemingly callous and detached legal discourse.

The first and most obvious one is the implication of the prohibition itself. Prohibitions are generally classed as *munkar* (evil/wrong). Imāmī jurists deem the undertaking of a prohibited act as "immoral" or "shameful" (*qabīḥ*) given that the *munkar* and thus the *qabīḥ* may potentially lead to damnation.[298] A *makrūh* act, at least within the context of law, is not a *munkar* and is therefore not immoral or shameful. In other words, *karāhah* is simply that which is best left alone (*tark*) but if one undertakes it, no sin is incurred. A brief recap can be stated as thus: *karāhah* is not immoral and does not directly lead one to damnation (although abstinence from it may lead to forgiveness of sin and divine reward) whereas actual prohibition gives way for serious soteriological concern. Anything that may lead one to the hellfire in any

---

[298] Al-Shahīd al-Thānī, *al-Rawḍah al-Bahīyah*, II, 414.

direct fashion is *qabīḥ* and must therefore be prevented. Even if it does not have direct social

effects, it is still immoral as it is an act of disobedience to God. No pious self can be cultivated

through disobedience to God.

There is some evidence suggesting that mutʿah with a zānīyah is assumed *qabīḥ* before

any attempt at *takhṣīṣ*. Al-Ṣadūq's strict reading of Q24:3 and his understanding of the moral

spirit of verse (that one who contracts such a marriage is himself a zānī) provides him with the

impetus to preclude any acceptance of traditions that may reduce the "wickedness" of such sin,

a sin that has direct soteriological and ontological implications for him. This is perhaps best

expressed in al-Ṣadūq's relaying of a report (attributed to Imam al-Bāqir) that states: "when a

zānī commits zinā, the spirit of *imān* leaves him."[299] One cannot, therefore, have sex with a

sinner and not have one's *qalb* and hence ontological bond with God affected.

Ibn Barrāj and al-Ṭūsī's specific requirement of *tawbah* and permanent end to zinā may

indicate a concern that temporary marriage with zānīyahs goes beyond the problem of bringing

children to the world with a morally questionable parent. For these two jurists, like al-Ṣadūq,

mutʿah with unrepentant women is spiritually detrimental for the believer where a simple

contractual relation, let alone intercourse can corrupt the metaphysical heart. Those who

prohibit this kind of marriage all seem to share a common concern for ontological corruption

through the performance of sex.

Among the modern jurists of the impermissibility camp, Makārim Shīrāzī offers the

most detailed argument against the permissibility of mutʿah with zānīyahs.[300] Shīrāzī's

arguments are not only jurisprudential and moral, but they are political in nature. Like al-

Ṣadūq, he believes that the wording and context of Q24:3 is too strong to merely indicate

---

[299] Al-Ṣadūq, *Man Lā Yaḥḍuruhuh al-Faqīh*, IV, 22.
[300] See Makārim Shīrāzi, *Kitāb al-Nikāḥ*, V, 84-89.

*karāhah,* especially when considering that the verse that forbids this marriage does so in parallel with marriage to polytheists (*mushrik*/*mushrikah*) whose "marriage prohibition" is one of the "certainties" (*qaṭʿīyāt*) of Islamic law.

Shīrāzī, however, goes even further. He states that allowing this practice not only goes against the moral spirit of the Qur'an whose actual prohibition is nearly certain, but that it puts the salvation of the Imāmī community as a whole in danger as it allows the mixing of semen (*ikhtilāṭ al-miyāh,* which the Sharīʿah in his view prohibits.) This risks the spread of illegitimate children given that it is unlikely that a zānīyah will change her personality even while married as her character prior to the marriage already showed no regard for Sharʿī moral precepts or fear of God. Moreover, as an anecdote to further support his position, Shīrāzī questions what moral precedent the jurists are setting by allowing the spread of "corruption" (*āludegī*) where Shīʿī men may have intercourse with zānīyahs. What are the subsequent effects such relations may have on their piety and bond with God?

On another note, Shīrāzī states that people, especially Sunnīs (*mukhālifīn*), already view mutʿah as being no different than zinā and Imāmī jurists should not give them more ammunition to use against Shīʿīsm. As a result, he concludes that those traditions that allow this practice must either be radically reinterpreted where full contrition is made a prerequisite (an option whose possibility he doubts as it is too idealistic) or that they must be set aside completely as they, in addition to having weak chains of transmission, contradict the moral spirit of the Qur'an. Temporary marriage with zānīyahs is to be prohibited either *a priori* or as an obligatory precaution. Whatever route is chosen, there is no way that Shīrāzī can bring himself to permit the marriage.

Shīrāzī's reasoning, even though inspired by a modern context, is part of a continuity in

the Imāmī tradition that sees sex and marriage as central for the salvation of Muslims. First and foremost, Shīrāzī's concern is for the future of the Shīʿī community which is secured through the creation of pious offspring. For Shīrāzī, pious offspring come from pious and legitimate lineages. In temporary marriage with zānīyahs, even if the production of offspring is less likely, it still poses a risk as it is still possible that the zānīyah wife may produce an illegitimate child. Second, it is a concern for the ontological state of individual Muslims and the necessity of safeguarding their hearts from questionable associations.

Yet there is a third concern that seems to be wholly modern and discontinuous with the tradition, and that is the image of Shīʿīsm that is portrayed to the outside world (e.g. Sunnīs) when practicing temporary marriage. Earlier texts, as far as I have seen, do not demonstrate any of these concerns. Most Sunnī jurists, with the exception of some Hanbalites, also allowed marriage with zānīyahs albeit in permanent form. Juristic treatises on sex with slaves were quite ubiquitous in both Imāmī and Sunnī law. If anything, the laws permeating concubines were set much more loosely than those of temporary marriage yet few moral objections, akin to modern ones, existed. If mainstream Sunnīsm (and the non-Shīʿī world at large) objected to the practice of temporary marriage and even associated it with zinā, it was not because it was morally reprehensible but because it was believed to be an illegitimate practice abrogated by Islam and hence invalid as a contract. If the marriage contract was invalid, then the relationship would be tantamount to zinā. Yet in the late nineteenth but mostly twentieth century in much of the industrialized Muslim world, many Muslims among the intelligentsia, even in the Shīʿī world, adopted, in some form, the semi-Victorian sentiments of their European colonizers.[301] As such, a wide expectation was slowly born (and spread to the masses) where, as a social

---

[301] For early European attitudes against Muslim sex in Iran, see Willem Floor, *A Social History of Sexual Relations in Iran* (Washington, DC: Mage Publishers, 2008).

norm, one was not only to be monogamous, but monogamous through permanent marriage; a necessary condition for the civilizing project of colonial and postcolonial modernity. For many Muslims, even for Shīʿīs, mutʿah represented the antithesis of the new sexual morality of the postcolonial Muslim world. If not legally, it became culturally synonymous with zinā, promiscuity and prostitution. Incidentally, it also became associated with adultery if a husband took on a mutʿah mistress.

## 3.3: THE MUTʿAH MISTRESS IN MODERN IMĀMĪ LAW

The only serious moral dilemma that jurists had with temporary marriage that is apparent to us in their textual discussions is marriage with zānīyahs. In modern Imāmī law, misgivings about temporary marriage, shaped by a postcolonial context that prioritizes modern conceptions of monogamy as the new universal human standard,[302] has taken another turn. Despite its stated utilities in preventing sin, there is notable tendency to dislike mutʿah in the wider Shīʿī community today. There are a number of anthropological studies on temporary marriage in the Shīʿī world where the ethnographic data suggests that dislike and suspicion of mutʿah is not uncommon.[303] Since the mid and late twentieth century, there has been a growing acceptance of a *particular* hegemonic discourse on the modern family; one that posits that intercourse,

---

[302] For a historical and cross-cultural study of monogamy and polygamy, see Miriam Koktvedgaard Zeitzen, *Polygamy: A Cross-Cultural Analysis* (Oxford and New York: Berg, 2008).

[303] See Linda S. Walbridge "Sex and the Single Shi'ite: Mut'a Marriage in an American Lebanese Shi'ite Community," *Family and Gender Among American Muslims: Issues Facing Middle Eastern Immigrants and Their Descendants*, ed. Barbara C. Aswad and Barbara Bildge (Philadelphia: Temple University Press, 1996); Richa Nagar "Religion, Race, and the Debate Over Mut'a in Dar Es Salam," *Feminist Studies* 26 no. 3 (2000): 661-691; Shahla Haeri "Temporary Marriage and the State in Iran: An Islamic Discourse on Female Sexuality" *Social Research* 59 no. 1 (1992): 201-223 and her book *Law of Desire: Temporary Marriage in Shi'i Iran* (Syracuse: Syracuse University Press, 1989); Afary, *Sexual Politics in Modern Iran*. In Nagar, there is a relevant quotation from one of her ethnographic subjects who says: "Mut'a is just an attempt to give [prostitution] a face of respectability ... [I]t does not fit with the principles of Islam."

particularly male intercourse, outside of the immediate nuclear family is morally reprehensible and thus to be *informally* classified as adultery. I say informal adultery given that mutʿah is not considered an authentic marriage in this discourse even if it is formally recognized by Imāmī law. The mutʿah *wife* of the juristic texts is thus transformed into the mutʿah *mistress* in a visible segment of the Imāmī lay community.

The higher seminars of jurisprudential learning (*al-bahth al-khārij*) have not been immune to the discourse of the mutʿah mistress. The most notable jurist to address the subject is Naṣir Makārim Shīrāzī. In addition to being one of the most eminent authorities in Imāmī law in the Shīʿī world, his juristic arguments have been the most detailed and extensive on this subject.

Most juristic discussions are generally detached from contemporary tensions and unease vis-à-vis their juristic responsa. This is not to say that the jurists ignore them whole-sale, but only that they are not included in formal discourse be it in their seminary work or their formal legal responsa. They are, however, dealt with informally either in person when meeting lay followers or via their representing offices. It is in these informal settings that the modern jurist's real views come to light, something which they often shy away from in public discourse. There are a number of reasons why this may be the case.

First, modern Imāmī jurists work as a guild. Although they may compete and even be hostile to one another, they are self-conscious about the rulings they make in public for fear of being ostracized by their peers and educated followers. The fear stems from going against dominant opinion as well as causing strife. Expressing a new opinion that openly goes against the grain is rarely welcomed and believed to be a cause for social discord. Many jurists assume that lay followers cannot handle novelty. It is often believed that fatwas that significantly

diverge from the status quo will give off an image of inconsistency, uncertainty and therefore instill doubt in the hearts of lay followers.

One may at times be forgiven for adhering to an uncommon precedent (although at times this may stir up tensions) but one is rarely forgiven for setting a new precedent in the law. Accusations vary from having one's scholarly credentials questioned, having one's integrity attacked by being accused of undermining God and the Sharīʿah for the sake of subjective (usually "Western") "preferences and trends." It is not uncommon for reformist clerics to be accused of subjugating Islamic law to the precepts of "Western cultural liberalism." Yet political theories in Imāmī jurisprudence that go against liberalism have also been treated the same way. Ayatollah Khumaynī's version of *wilāyat al-faqih* for example, was initially attacked for being an unprecedented innovation in Imāmī law by conservative arch-jurists like Abū al-Qāsim al-Khūʾī just as his ruling allowing chess was severely criticized. Critiques are not restricted to the law. The Imāmī world's foremost Qur'anic exegete Muḥammad Ḥusayn Ṭabāṭabāʾī (d. 1981) was severely criticized for introducing Qur'anic exegesis and *falsafah* to his teaching curriculum. Qur'anic exegesis was seen as a waste of time for the only true sciences were *fiqh* and *uṣūl al-fiqh*. *Falsafah* was seen as an even more dangerous distraction that could potentially deviate and distort the beliefs of young seminary students.

The second reason is out of pietistic precaution. The jurists believe that they will ultimately be held to account on the Day of Judgment for their legal responsa. Contradicting historically mainstream opinions and deviating from what is assumed to be the safe-based or comfort zone of the law is dangerous grounds for the jurist in question who may be reprimanded by God for following his personal opinion instead of observing pious precaution.

As such, *personal* salvific considerations factor in to how jurists present the law to the public.

What is true for the current juristic guild is that many, if not most of the leading jurists hold private opinions that counter what is publically mainstream.[304] It is only when a problem becomes large enough that they get dealt with in their professional discourse. Private opinion becomes public based on what the jurist deems necessary and therefore important enough to give him moral and salvific capital to challenge his peers as well as reason to feel that he would be excused before God if he were mistaken.


### 3.3.1: NĀṢIR MAKĀRIM SHĪRĀZĪ, THE MUTʿAH MISTRESS AND THE PROHIBITION OF UNCHECKED TEMPORARY MARRIAGE

Nāṣir Makārim Shīrāzī (b. 1926)[305] is one of the senior most jurists in the Shīʿī world today. Publically he is considered an arch-conservative from gender sports issues[306] to politics.[307] His public persona as an arch-conservative and powerful ally of Iran's Islamic government gives him leeway to address issues in Islamic law that go against the mainstream. As far as this study is concerned, his concerns regarding the effects of the mutʿah mistress are weighty enough to

---

[304] Perhaps a good case in point is the case of marijuana. A number of high ranking jurists privately believe that there is no evidence prohibiting the smoking of marijuana but keep silent on it in public. I am aware that public necessity sometimes requires that something be prohibited even if there is no evidence for it, and this is standard practice among Imāmī jurists, but in this case they prefer to avoid discussing the subject altogether and only express their views in private.

[305] Nāṣir Makārim Shīrāzī was born in 1926 in Shiraz to a non-clerical family. His education was divided between the cities of Qum and Najaf. Under Ayatollah Shariatmadari, he published Iran's first Islamic magazine called *Maktab-i Islāmī*. Although he was a member of Iran's government in its early stages, he has spent most of his time teaching and publishing works. At the moment he is the most prolific writer among the high ranking jurists of the Shīʿī world today.

[306] Makārim Shīrāzī came to limelight during Mahmoud Ahmadinejad's tenure as president of Iran (2005-2013) when the latter wanted to allow women to attend sports stadiums, something which Iran's Islamic government has prohibited since the early days of its inception. Makārim Shīrāzī was the most vocal critic of Ahmadinejad's stadium policies.

[307] Makārim Shīrāzī is also considered to be a "defender of Shīʿī rights." There is not a single major political event in the Shīʿī world that he does not publically comment on. He is most famous for his criticisms of Saudi Arabia and establishing media channels proselytizing Shīʿīsm to Sunnis. The famous satellite TV channel Velayat TV is controlled by his office.

merit public discourse on the subject.[308]

Shīrāzī does not see himself as a reformist cleric and his public declarations against some practices of temporary marriage is by no means an indicator that he publicizes all of his real opinions. For example, in his published treatise on law, Makārim Shīrāzī deems non-Kitābīs (e.g. Hindus) as ritually impure. Yet that is not representative of his true opinion as he subscribes to the view, as held by his predecessor Muḥammad Bāqir al-Ṣadr (d. 1980), that impurity is intrinsic to people's beliefs and not their physical bodies hence making non-Kitābīs ritually pure.[309] Shīrāzī, however, does not believe this opinion is pressing enough to warrant the controversy that his view would generate if it were made fully public. The mutʿah mistress, however, presents a direct danger to the Shīʿah community. He views the "abuse" of mutʿah as undermining the institution of permanent marriage and thereby undermining one of the foundational salvific pillars of the Shīʿī world in Iran and abroad.

Shīrāzī begins with restating the *telos* of mutʿah in the soteriological imagination of the Imāmī tradition, that is, to give an alternative to zinā for those who cannot marry permanently or who do not have access to their permanent wives (e.g. where a permanent wife is disabled and can no longer engage in intercourse.) This is intended to set the proper grounds for his new rulings restricting "unchecked" practices of mutʿah.

In a rather unique presentation, Shīrāzī introduces mutʿah with traditions that are rather critical or at the very least, cautious vis-à-vis its practice. The usual trend in standard presentations are traditions that unambiguously permit it in addition to extolling it. As discussed earlier, this has historically been for polemical and apologetic reasons.

---

[308] For his discussion on the mutʿah mistress, see Makārim Shīrāzī, *Kitāb al-Nikāḥ*, V, 26-29.

[309] Some may criticize my point by saying that that this view is not a *fatwā* (final legal verdict) from him. However, in a private conversation with a close and trusted colleague of mine, he explicitly said *anā uftīu bi ṭahāratihim*, "I am issuing a fatwā on the ritual purity of Hindus."

Shīrāzī presents three traditions from *Wasāʾil al-Shīʿah,*[310] the primary Imāmī compendium of legal traditions for post-Safavid era jurists:

1) ʿAlī b. Yaqṭīn said: I asked al-Riḍā about mutʿah and he said: "what have you to do with it when Allah has made you needless of it [as you already have a permanent wife?]"[311]

2) Al-Mufaḍḍal said: "I heard al-Ṣādiq say [the following] about mutʿah: Abandon it. Are any of you not embarrassed to be seen in a shameful situation when it could be held against the righteous among his brethren [in faith] and companions?"

3) Al-Riḍā (Abū al-Ḥasan)[312] wrote to some of his supporters: "Do not insist upon mutʿah. It is only upon you to establish the tradition of the Prophet (Sunnah), so do not occupy yourselves with it on your beds and sheets -  for women will disbelieve, distance themselves [from the Ahl al-Bayt], ruin this affair (*walāyah*) by it, and curse us."

The traditions are significant in two ways. First, they present caution vis-à-vis traditions that encourage the largely unrestricted practice of temporary marriage. Al-Riḍā, for example, is surprised when he is asked about mutʿah for it is not expected or worthy that a permanently married man should take on temporary wife. More importantly, however, the traditions demonstrate a concern for the moral standing of Shīʿī believers in which mutʿah may adversely affect the corporate image of Shīʿism and lead women to reject it and the overall *walāyah* of the Imāms if it is practiced in a way that people find it morally objectionable. In other words, I

---

[310] Al-Ḥurr al-ʿĀmilī, *Wasāʾil al-Shīʿah*, XXI, 22.

[311] The tradition continues supporting mutʿah as a correct practice when one's intention is to increase the population of Shīʿīs. Makārim Shīrāzī's purpose of quoting this tradition is to lend support to his view that mutʿah may not be used as a legitimizer for promiscuity (*shahvat va hawā*).

[312] There is also a possibility that the Imam in question is the seventh Imam Mūsā al-Kāẓim and not al-Riḍā as the transmitter of the tradition is Muḥammad b. al-Ḥasan Shammūn who was a narrator of al-Kāẓim and not al-Riḍā.

have not seen mutʿah as such being a collective moral problem in premodern sources (this is a modern phenomenon as far as I have seen) but there is evidence, such as the traditions above, that certain practices of it may have irked some. The suggestion that mutʿah in the third tradition may alienate women from *walāyah* and the Imams is indicative that the statement is primarily in reference to Shīʿī women and presumably the permanent wives of its male practitioners.

The listing of these traditions by Shīrāzī is in no way an attempt to prohibit temporary marriage. He explains that they hold evidentiary value to the extent that mutʿah in the source texts is not an uncontested good but a practice whose acceptance is conditional to one's immediate context. Mutʿah can either be permissible (*mubāḥ*), obligatory (*wājib*), recommended (*mustaḥabb*), reprehensible (*makrūh*) or forbidden (*ḥarām*), meaning that mutʿah in and of itself is not an absolute or unqualified good as it is sometimes perceived or even portrayed by some jurists.

The second phase of Shīrāzī's discussion revolves around secondary order imperatives, that is, *al-aḥkām al-thānawiyah*. As seen earlier, *al-aḥkām al-thānawiyah* are imperatives that facilitate the departure from the letter of the law when the said law contravenes a general legal or moral principle. In this case, the principle is Commanding the Good and Forbidding Wrong.

Shīrāzī then makes his misgivings explicit regarding some practices of mutʿah. He states that the use of temporary marriage – like divorce – has become abused to the extent that its ill-use not only serves as a polemical tool against the moral standing of Shīʿīsm by Sunnīs and non-Muslims alike, but the practice has drawn the ire and aversion of many believing Shīʿīs to the point that it is not uncommon for them think that it is worse than zinā. Zinā, according to its critics, is at least honest whereas mutʿah is more shameful as it is simply a

euphemism for zinā and religiously sanctioned promiscuity.

His greater misgivings are directed towards the consequences of taking on secondary temporary wives while permanent marriage is practiced or available. Permanent marriage in Imāmī law is the primary and most important form of marriage. The traditions that extol the virtues of marriage are about permanent marriage and not mutʿah (mutʿah is praised for different reasons and is usually done so on its own terms.) The juridical pages devoted to permanent marriage largely outnumber discussions on temporary marriage. The most important reason being the primary position that permanent marriage holds vis-à-vis the soteriological wellbeing of the Shīʿī community in which the metaphysical heart is nurtured in. Temporary marriage is useful in preventing zinā, but so is permanent marriage except that the latter offers the benefit of more spiritual growth as well as the creation of the next generation of pious Shīʿīs and a lifelong pious companion.

Shīrāzī acknowledges that in the current context, although temporary marriage may help prevent zinā, its practice is correlated with the breakdown of many permanent marriages and families due to its wide scale unacceptability among Shīʿīs themselves. As a result, he qualifies the permissibility of temporary marriage through a secondary order imperative. This means that even a recommended practice like mutʿah (if one accepts that it is by default recommended – an assumption which Shīrāzī rejects) may be overturned if - in a particular context - it leads to a qualifiable harm or evil. The evil in this case is the breakdown of Shīʿī families and permanent marriages and the ill repute it causes Shīʿīsm. As permanent marriage is fundamentally more important than temporary marriage for the salvation of the community, the principle of Commanding the Good and Forbidding Evil is enacted to restrict the practice of mutʿah.

Makārim Shīrāzī is careful not to forbid temporary marriage outright but states that the practice must be controlled by Iran's Islamic government, at least for its own citizens. Any valid temporary marriage for Iranians living in the country must be registered in state offices. The state reserves the right to question the intent of the couple who wish to marry and has the right to deny the marriage if it judges the practice to be potentially harmful. For example, a husband who already has a healthy, accessible wife and wishes to contract a temporary marriage for the sake of "indulging himself" may be denied the right to mutʿah. Makārim Shīrāzī states that the practice of state control and restriction over legal practices is not new. He mentions the modern practice of state interference in divorce as arbitrary divorces by husbands often lead to harm. Today, he states, Iranian men cannot arbitrarily divorce their wives; they must first go to court and have their case judged and the court reserves the right to delay and even deny the immediate validity of a divorce. For Shīrāzī, state control over marriage is therefore nothing new, at least in the modern Iranian context. Even though the practice of state intervention on family affairs is a modern practice and unprecedented in most of Imāmī law's history, the principle of Commanding the Good and Forbidding Evil is justification enough to "governmentalize" (politicize) moral problems in Imāmī jurisprudence.

It is easy to see how Shīrāzī's proposition expands the domain of the state's disciplinary mechanism of power. Following the modern trend set by Ayatollah Khumaynī's absolute *wilāyat al-faqih*, Shīrāzī delegates the procedural management of saving the Shīʿī community to the modern state thereby not only expanding its domain of power in this world but in the afterlife as well. For Shīʿī law, this has largely been unprecedented, but the practice of departing from the letter of the law for the sake of the greater good, namely the salvation of the community, has traditionally been an integral part of its legal practice. Although the

resulting ruling is new, the usage of the principle of Commanding the Good and Forbidding Evil for new soteriological concerns in the preservation of the pious self is not. As such, Makārim Shīrāzī's view on temporary marriage may be novel, but the idea of salvation as the defining quality of being human and the doctrine of Commanding the Good and Forbidding Evil that attempts to secure this salvation is transhistorical.

### 3.4: CONCLUSION

Although Imāmī jurists, at face value, differ on marital law and at times seem to be significantly at odds with each other, they are nevertheless subject to the same guiding principles of marriage and the Sharīʿah as a whole. When concerns for salvation are serious enough, they do not shy away from concluding rulings that the feel would maximize the soteriological success of the believing community. Legal disputes are quite common in Imāmī marriage law. Differences in legal method are only one part of the story. A prime driver of these disputes in marriage law are what jurists think betters the salvation of the community. Subjective understandings of what promote soteriological success often translate themselves, at first glance, as disputes in legal theory and method. Although differences are real, they also work in parallel with the salvific considerations of jurists where these jurists will sometimes backtrack on their own initial verdicts when they deem them to be soteriologically detrimental.

The precautionary approach to temporary marriage and salvation by the Imāmīs of the impermissibility camp plays an important role in the interpretive enterprise of Imāmī law. Not only does the concern for salvation, framed under the doctrine of Commanding the Good and Forbidding Evil, play a notable role in defining the usage of *uṣūl* tools in the derivation of the law, but it also plays a role in inverting the dominant discourse of Imāmī law. As it was briefly

seen in earlier chapters, and will be seen in more detail in the chapter five, challenging dominant discourse at times goes as far as inverting popular restrictions on women's agency which are believed to exacerbate risks of zinā in marriage and divorce thus endangering the salvation of the community. The inversion of some of these restrictions is significant as it suggests that patriarchy as a framework of superior male power in gender relations may not be an essential and incontrovertible component of the Imāmī interpretive enterprise but may be sacrificed for the sake of the community's salvation and maintaining its ontological bond with God (*īmān*), the ultimate aim of the Sharīʿah.

It is evident that this chapter, however, was not about inverting rulings for the sake of women's salvation. If the law was inverted on mutʿah, it did not invert asymmetrical power relations (this happens in chapter two and five). The problematic practices of mutʿah – in the eyes of the jurists - posed a problem for the salvation of *men* and not necessarily women. For jurists who were against with temporary marriage zānīyahs, the law was principally (although not totally) inverted in order to ensure the salvation of men and preserve mutʿah as a technology of the pious *male* self. Even though the law may have been applicable to women, they were not the intended subjects of the discourse for this kind of mutʿah was assumed to be a problem for men, not women.

CHAPTER FOUR

SEXUAL DISOBEDIENCE AND WIFE-BEATING IN IMĀMĪ JURISTIC SOTERIOLOGY

## 4.1: INTRODUCTION

All sex is soteriologically operative in Islamic law. Judith Tucker writes how the "power of human sexuality" was a continuous threat to the community in terms of its potential for *fitnah* or communal strife.[313] Tucker understands *fitnah* as "the lurking disorder that stalked the Muslim community thanks to the force and vitality of the human sex drive." For the discursive tradition of Islam, it was "the twin beliefs in the power of human sexuality and its potential for social disruption that animated the legal discourse on male-female interaction."[314] The problem of *fitnah* did not stop there. As seen earlier, *fitnah* was not only a worldly crisis, but primarily a soteriological and eschatological one for it creates a spiritually corrosive environment for the fashioning of the pious self. This is because the disorder further exacerbated the presence of sin and was thus detrimental to the growth of *īmān* and the virtuous self. More precisely, it subverted the community's ontological bond with God, it opened the path to demonic control over individuals and the community, and if pervasive enough, it was a hastener as well as a *sign* of the end of the world and the subsequent resurrection of humankind to God's Judgment (*ashrāṭ al-qīyāmah*).

Fitnah is not the exclusive domain of sex only but encompasses any situation that carries a "sense of temptation or trial of faith."[315] *Fitnah* can either be an affliction from God who punishes the unrighteous, or the product of human evil that threatens the harmony of the Muslim community. Harmony expands to all realms of human existence, what comes to be

---

[313] Tucker, 215.
[314] Ibid., 190.
[315] EI2 "Fitna".

human generated *fitnah* is a form of human action that challenges communal harmony to the extent that it poses a soteriological and eschatological danger for all its participants. Political upheavals were historically acknowledged as natural candidates for *fitnah* (at least for ruling elites); but even more so were challenging normative or popular doctrines. Such challenges were not merely political acts that threatened the religious discourse of the ruling elite, but they were believed to create susceptibility to blasphemous ideas that could result in deviation from doctrinal norms and hence the soul's salvation. Unorthodox beliefs were hardly helpful for salvation; they were downright detrimental.

For most Muslim jurists, the most dangerous form of *fitnah* was illicit sexual activity whose pinnacle was zinā as it bore the largest potential for subverting the salvific harmony of the Muslim community. As seen earlier, jurists saw sexual lust as the single greatest weakness of humankind in so far as sinful activity was involved. Sexual desire was the one power that could undermine and overwhelm the strongest of believers in all spheres of life, whether it was in their direct relationships with other beings or in the privacy of prayer where sexual thoughts could disorient and derail a supplicant's focus on God. Sexual sins also contributed to undermining the harmony of marriages, which Satan and demons in the Islamic narrative wish to subvert in order to lead humankind to damnation. The Qur'an for instance explains that the reason why demons taught humankind witchcraft or 'black magic' (*sihr*) was to separate husbands and wives (*yufarriqūna bihi bayna al-marʾi wa zawjihi*).[316] In one famous Prophetic tradition highlighting Satan's antagonism towards marriage, it is stated that:

> Iblīs (the devil) places his throne upon primordial water (*al-māʾ*) and then sends his detachments (for creating *fitnah*); the nearer to him in position are the greatest in sowing fitnah. One of them comes and says: "I did such and such" and Iblīs responds that he has done nothing. Then one of them comes from among them and says: "I did not leave them until I separated a husband and his wife. Iblīs then goes near him and says "you have done well" (*niʿma*

---

[316] Q2:102.

*anta*). Al-ʿAmash said: He then embraces him.[317]

The tradition is significant on many ground in the salvific imagination of the juristic tradition. The devil's concern is not the abandonment of ritual practices like prayer, nor is he too worried about blasphemous beliefs. All of these are well and unoriginal for him if not insignificant in the larger mission to destroy humankind. Much of these human errors can easily be repented from and rectified. A person who does not pray can, with relative ease, turn back and begin praying again. A person with blasphemous beliefs can change back to proper orthodoxy. Unorthodox beliefs can spread and endanger salvation, but the attitude is that despite its real dangers, unorthodoxy can be contained by trained scholars, religious leaders as well through a specific community's tribal loyalty to that particular orthodoxy.

The breakdown of marriage is a recipe for communal crisis. Marital breakdowns due to sexual vices are universal and they are hard to control or prevent as sexual desire is a potential pathology that exists in all humans. When it comes to the lures of zinā, the Imāmī tradition is adamant that not even the most pious of religious leaders are immune from it.

As seen earlier, the telos of marriage in the Imāmī juristic imagination is twofold. First, it is the primary alternative for illicit sexual activity. Since sex is soteriologically operative, illicit sex subverts the ultimate aim and marker of human salvific success, namely the pure metaphysical heart. In other words, illicit sex directly corrupts and "blackens" the *qalb*.[318]

Second, marriage offers the primary means for procreation and the maintenance of proper generational relations whereby piety is transferred unto one's descendants. Any form of

---

[317] Muslim b. al-Ḥajjāj al-Nīshābūrī, *Ṣaḥīḥ Muslim*, 5 vols., ed. Muḥammad Fu'ād al-Bāqī (Beirut: Dār 'Iḥyā al-Kutub al-ʿArabī, 1412/1991), IV, 2167; for Shīʿī sources, see, for example, Pāyandah, 268.

[318] The blackening or darkening of the heart is a common metaphor used in many Muslim source-texts to describe the corruption of the metaphysical heart, as in the expression of a "black dot" (*nuktatun sawda'*) that appears on the heart when an individual sins. The blackening of the heart is a process where through sin, the *qalb* becomes less receptive to God's guiding and providential light (*nūr*) and thereby creating an ontological break between the normative believer and God.

marital breakdown raises the potential for sexual *fitnah* for it reinstitutes a soteriological crisis that marriage was supposed to address and solve in the first place. As a result, if marriage fails as an effective institution to prevent zinā and fails to create the next generation of pious Muslims, then the community can no longer function as a nurturing ground for the sound metaphysical heart and a healthy ontological bond with God. In this sense, marriage can no longer act as a technology of the pious self. For the Imāmī legal tradition, the prevention of sexual *fitnah* becomes imperative as a soteriological project in the law in order to save the community of believers. There is no greater *fitnah* than the breakdown of marital relations, the crux of communal salvation in Imāmī Islam.

This chapter will deal with the juristic attempt at addressing the crisis of marital breakdowns after marriage has already taken place. It will delineate the problem of sexual disobedience and the corresponding response of wife-beating in Imāmī juristic discourse. This will be framed within the context of marital disobedience in general (which encompasses both husbands and wives) with the respective corporal punishments assigned to them. I will argue that, in the juristic imagination of Imāmī law, wife-beating is not so much an assertion of patriarchal authority over wives but an attempt to redress, in private, a potential form of subversion to Muslim salvation where the wife's sexual denial of her husband opens the door to illicit sexual activity. Wife-beating is not simply understood as safeguarding a right that may be violated, but a delegation to the husband, by God, of an act of violence in order to prevent a subversive sin that threatens both members of the marriage and the community at large.

Parallel to this, I will also illustrate that a well-grounded notion of male disobedience also exists in Imāmī law whereby a husband's act of *nushūz* (disobedience to what God has mandated for him in marriage), that is, his unwillingness to carry on his marital

responsibilities, is also liable for corporal punishment – usually in the form of lashing. Like female disobedience, male disobedience is also framed soteriologically for his subversion of marital responsibilities threatens the salvation of his family and the believing community. The difference between the two punishments is that for the former, it is in response to preventing potential sin, whereas for the latter, it is an attempt to prevent the continuation of a sin. Since the sin is actualized, as opposed to that of a wife, the punishment is much more severe.

If marriage is a technology of the pious self, it does not – strictly speaking – function individually only. The cultivation of the pious self is not only a personal endeavor, but is a mutual activity between spouses. It is also a communal activity for salvation does not function singularly, but functions through a communal web of spiritual cultivation. This is because Imāmī jurists assume that humans are rarely saved on a solitary basis. Just like a cooperative community is needed for material wellbeing, it is also needed for salvific wellbeing. The pious *qalb* is therefore cultivated through a communal matrix. As such, wife-beating or husband flogging are disciplinary mechanisms for ensuring virtue in one's spouse and thereby fashioning and sustaining piety in one's own self and the other.

## 4.2: THE MALE NĀSHIZ IN IMĀMĪ LAW: MARITAL RESPONSIBILITIES, GOOD MANNERS AND THE DILEMMA OF "DISOBEDIENT" HUSBANDS

In addition to procreation in which husband and wife are equal partners, marriage is a means to preventing illicit sex between men and women. Although the primary targets of marriage – in so far as preventing illicit sexual activities are concerned - are men, women are also understood to have sexual desires that need to be met. While men are more prone to zinā, the involvement of women as partners in zinā indicates that women are not immune to succumbing to their desires. Whatever the extent of female desire may be, compulsive desires are seen as

largely a male problem in which Muslim wives bear the responsibility remedying meaning that women, in addition to men, are direct participants in the fashioning of their spouse's pious self. For this reason, women's bodies are not simply objects of desire, but their bodies *as wives* are objects of salvation. Imāmī juristic law, as a socio-legal framework, is constructed on a 'communalist' platform in which social and communal responsibilities and duties are the primary definers of legal subjects. This is in contrast with an individualist socio-legal framework that emphasizes the primacy of rights; a relational way of being that is largely alien if not anachronistic to much of the historical Imāmī tradition.

As a wife is primarily tasked to remedy her husband's sexual compulsivity or pathology, Imāmī jurists hold that husbands bear the responsibility of keeping their wives happy and comfortable through a series of obligations. By fulfilling these obligations, Imāmī jurists hope to minimize incidents of sexual recalcitrance by wives. Sexual recalcitrance is a real fear as it not only puts husbands at risk for illicit sexual activity, but also puts wives at risk for damnation since Imāmī legal doctrine holds that sexual disobedience is ultimately disobedience God and his moral order.

The primary responsibility of a husband is to provide sustenance (*nafaqah*) for his wife (or wives). Basic living necessities constitute the core of *nafaqah*, including food, clothing, shelter and security. The food given to a wife, as jurists understood it, was not to be bits and pieces, but was to be provided to the extent of satiety. Furthermore, the food had to be in accordance with the norms of the town she came from. Husbands were required to give various types of clothing, one to keep her warm during cold weather and another set to keep her cool during hot weather. If the wife was irresponsible with her clothing and continuously ruined them before their customary "expiration" dates, the husband was no longer required to

purchase her a new set of clothes. *Nafaqah* could also expand to cosmetics, perfumes, public baths (*ḥamām*), midwives and housemaids if the husband could afford it. If a husband could not afford a maid, Imāmī jurists ruled that the husband himself had to take up the responsibilities of a housemaid (*yakhdamahā bi-nafsihi*) if the wife demanded it.[319] If requested by the wife, the husband was also under obligation to financially compensate her for having breastfed their children. The only form of breastfeeding the husband was not obligated to compensate for was colostrum as Imāmī jurists believed that providing it to newborns was an individually mandated duty to mothers. Since the act was a divinely prescribed duty, no compensation could be extracted from the husband. Depending on his financial status, a husband was also required to give his wife the same living standards that she received under her guardian (usually her father). The extent of the *nafaqah*, beyond the necessities of life, depended on social status. If a wife had a high social status and was accustomed to luxury, the husband was required to meet what was befitting her social status. However, he was not obligated to give anything beyond what women her status ordinarily received. Imāmī jurists determined the extent of *nafaqah* based on what was the norm in the town from which the wife came from. Judith Tucker lists some of the hairsplitting details of *nafaqah* in Islamic law:

> Many elaborated on what kinds of food were actually required: a man who
> was neither rich nor poor but of middling income, for instance, should provide
> his wife with meat every three days or at least "occasionally." They also added
> other necessities of life, such as supplies of water, oil, wood, salt, the salary of
> a midwife (for her deliveries), cosmetics like kohl to line her eyes, and henna
> and creams for her skin and hair. Lodging also entailed specific requirements:

---

[319]al-Ṭūsī, *al-Mabsūṭ fī Fiqh al-Imāmīyah*, 8 vols., ed. Muḥammad Taqī Kashfī (Tehran: al-Maktabah al-Murtaḍawīyah li-'Iḥyā' al-Āthār al-Jaʿfarīyah, 1387/[1967-1968], VI, 5; Ibn al-Barrāj, II, 343; Muḥammad b. Quṭb al-Dīn al-Kaydarī, *Iṣbāḥ al-Shīʿah bi-Miṣbāḥ al-Sharīʿah*, ed. Ibrāhīm Bahādurī Marāghī (Qum: Muʾassasah-yi Imām-i Ṣādiq, 1416/1996), 444; al-Ḥillī, *Taḥīr al-Aḥkām*, IV, 32; *Talkhīṣ al-Marām fī Maʿrifat al-Aḥkām*, ed. Hādī Qubaysī (Qum: Intishārāt-i Daftar-i Tablīghāt-i Islāmī-i Ḥawzah-yi Qum, 1421/[2000-2001], 207; *Qawāʿid al-Aḥkām fī Maʿrifat al-Ḥalāl wa-al-Harām*, 3 vols., ed. Gurūh-i Pazhūhish-i Daftar-i Intishārāt-i Islāmī (Qum: Daftar-i Intishārāt-i Islāmī,1413/1993), III, 106; Muḥammad b. Ḥasan b. Yūsuf al-Ḥillī (Fakhr al-Muḥaqqiqīn), *'Īḍāḥ al-Fawā'id fī Sharḥ Mushkilāt al-Qawāʿid*, 4 vols., ed. Ḥusayn Mūsawī Kirmānī, ʿAlī Panāh Ishtihārdī and ʿAbd al-Raḥīm Burūjirdī (Qum: Muʾassasat Ismāʿīlīyān, 1387/[1967-1968], III, 217; al-Shahīd al-Thānī, *Rawḍah al-Bahīyah*, V, 470; *Masālik al-Ifhām*, VIII, 455.

> a wife was entitled to a separate room exclusively for her use (and that of her husband of course) with a door that she would lock with a key, and no one save her husband could enter without her permission.[320]

The sustenance needs were best if offered in the morning so as to guarantee *nafaqah* for the whole day. A wife had full claim to whatever money or property she earned, including the wages earned from her husband, meaning that not even her parents or children could lay claim to her wealth. If need be, the husband was obligated to provide for his parents and children if they fell into poverty even if they were not Muslims. If the husband missed a part of sustenance for his parents or children, he was not obligated to make up for them. However, he was required to make up (*qaḍā*) for whatever sustenance he missed for his wife. The level of obligation a husband held towards his wife was not dissimilar to the obligations he had towards God for he was also obligated to make up for prayers and fasts when he missed them and hence explaining part of the reason why Imāmī jurists considered marriage as an act of worship and ritual practice. As part of his marital duties, the husband was not allowed to take his wife away from her hometown without her formal consent.

The customary variable of *nafaqah* is largely derived from Q4:19 "and consort with your wives in a kindly manner"[321] (*wa ʿāshiruhunna bi-al-maʿrūf*). The term *maʿrūf* is not a fully objective good as the root meaning of the word (*ʿurf*, "custom") suggests. As such, a husband is obligated to provide what is *customarily* suitable for his wife. If his wife comes from a wealthy background, he is to offer what is befitting her social status in so far as his financial circumstances allow.

There are other obligations that do not depend on variables but are universal duties that Muslim husbands must fulfill. One particular duty that Imāmī jurists spend a great deal

---

[320] Tucker, 51.
[321] See al-Shaḥīd al-Thānī, *al-Rawḍah al-Bahīyah*, V, 471.

discussing is *qasm*, or nightly allotments to the wife. The set standard is that out four nights, a husband must spend one full night with his wife in bed. The number four is standard in the law as a man is allowed up to four wives and each wife has the right to one allotted night. Imāmī law understands *qasm* as a subset of the above verse "and consort with your wives in a kindly manner" thus implying that regularly sharing nights, at a minimum of one night out of four, is the bare necessity for marital health. In other words, although *qasm* is primarily a wife's right, the Imāmī tradition holds that it is a necessary practice for marital harmony and keeping marriage from breaking down. As wives must be available for their husbands so as to keep them away from sin, husbands must be regularly available for their wives throughout the month. Persistent absence by husbands and lonely wives is believed to lead to marital breakdown and even zinā in the form of female adultery. The rules of *qasm* are therefore quite stringent as they have a direct bearing on salvation. As a matter of Commanding the Good and Forbidding Evil, failure to uphold the rules of *qasm*, as it will be seen, can lead to severe physical punishment.

Imāmī jurists generally set the beginning of *qasm* at wedlock,[322] regardless of whether or not the husband began spending his nights with his wife. A minority, however, believe that *qasm* comes into effect once the husband spends his first night with his wife.[323] If a man has multiple wives on the latter opinion, once he begins *qasm* with his first wife, then it immediately becomes incumbent on him to allot nights to his other wives. How he chooses to divide up the nights between his wives is up for debate; one group of jurists state that the husband has free reign in *qasm*, that is, he can choose the nights he allocates to his wives.

---

[322] Al-Ḥillī, *Taḥrīr al-Aḥkām*, III, 588; al-Shahīd al-Thānī, *al-Rawḍah al-Bahīyah*, V, 404.
[323] See for example al-Ṭūsī, *al-Mabsūṭ*, IV, 325-326.

Other jurists do not permit this stating that the husband must remain neutral and cannot choose by himself. He must therefore choose by lot (*qurʿah*) which seems to be the dominant opinion.

The dominant Imāmī view also states that a man may not establish *qasm* for more than one night at a time. He may not, for example, allocate two consecutive nights for each wife as it may lead to "harm" (i.e. other wives will have to wait longer to get their share of their husband which in turn may lead them to sinful behavior, e.g. adultery) unless all the wives involved consent to this larger division. A minority of jurists, however, believe that a husband may divide nights beyond the one to four ratio even without prior consent from his wives.[324] Others who allow *qasm* for more than one night a time do so on the condition that some kind of serious inconvenience is present. For example, the wives may be living far apart and the standard practice of *qasm* may lead to serious or debilitating financial loss due to travel costs and inconveniences. Such a case may allow a man to divide the nights to the degree that is necessary. If he wants to increase the allotments beyond what is necessary, he would need the permission of his wives.[325]

*Qasm* is obligatory on all married males regardless of their social position (free or slave) or sexual status (eunuch or impotent) as intimacy (*ʾīnāth*) in bed is the purpose and not coitus.[326] If a husband is travelling, *qasm* is no longer obligatory. If a husband is to take a single wife with himself, Imāmī jurists stipulate that the husband should choose a wife through casting lots, although this view is not normative. If he takes all of his wives on a trip, then he must divide between them equally. If a woman, however, goes on an obligatory trip (e.g. Ḥajj) or if she goes on a non-obligatory trip with the husband's consent, then he must compensate

---

[324] Al-Suyūrī, *Kanz al-ʿIrfān*, II, 216.
[325] Al-Shahīd al-Thānī, *al-Rawḍah al-Bahīyah*, V, 411.
[326] Ibid, 412.

(*qaḍā*) for all the nights that he missed with her. However, if she does so against his will when her trip is not necessary, then the husband is under no obligation to make up for the missed nights. *Qasm* is specific to nights and a man may not switch nightly allotments for daily allotments unless he works graveyard shifts and is unavailable at nights. If this is the case, then he must spend one full day out of four days with his wife.[327]

If a man happens to be insane, his appointed guardian is to settle his nightly allotments for him. If an appointed guardian fails to uphold equality in nightly allotments between the spouses, then he, and not the husband, will assume the sin and will be accountable before God on the Day of Judgment. Wives may not privately strike deals with one another where one wife gives up one of nights to another wife as *qasm* is a mutual right between husband and wife even if the wife's claim to the right is higher. A wife may desire to give up her right to spend the night with her husband, but her husband may desire otherwise and for such an exchange to be valid, the wives in question must receive the husband's prior consent. Most jurists deem that any exchange of nights must be done out of free will and without monetary exchange because *qasm* cannot be turned into a business transaction. Marriage, as it was seen earlier, is an act of worship (*ʿibādah*) and a ritual practice; it is primarily a question of soteriology in Imāmī law. An underlying factor in such a prohibition is that although intercourse is not obligatory during *qasm*, intimacy still plays a role in preventing illicit sexual activity as it is an emotional and non-penetrative sexual need. During *qasm*, a husband must be close enough to his wife where she can feel the warmth of his body. Furthermore, he is not allowed to turn his back towards her without her prior consent. The idea is that the allure of monetary gain will push wives to give up intimacy with their husbands which may erode their relationship and leave the need for

---

[327] Ibid., 413.

proximal and emotional intimacy unfulfilled which most humans are assumed to need. It is believed that this gap may be a prelude for potential adultery as this kind of intimacy may be sought elsewhere and by extension, lead one to zinā. In this view, *qasm* cannot be used as an object of transaction for it potentially puts a woman's, or couple's, salvation at risk. The strict laws governing *qasm* is therefore part of the soteriological objectives of marital law in the Imāmī tradition.

If a wife gives up her night with the consent of her husband but regrets her decision later at night, the husband must return to her immediately. If he does not, he is liable to sin and must make up for whatever time period he missed with his wife after she changed her mind. If she changes her mind after the night has passed, the husband is under no obligation to make up for the missed night. If a husband is unaware that his wife changed her opinion, then he is not liable to sin and is not obligated to make up for the missed night. While spending the night with one wife, the husband may not leave the home for an errand or go to another wife's home unless it is absolutely necessary. If he does so out of necessity, he is obligated to make up for the missed period in which he left the home unless the time is so short that it would customarily not be considered a time away from home. Necessity, however, only absolves a man from sin but it does not absolve him from his responsibility for making up for lost time with his wife. If he fails to make up for lost time, then he will be in a sinful state even if his initial reason for leaving was legitimate.

The failure of a husband to meet his responsibilities and duties towards his wife falls under the legal category of *nushūz*. *Nushūz*, in legal terminology, can be translated as recalcitrance and disobedience. The word literally means to be elevated and hence denoting a form of arrogance on the part of the one committing it. *Nushūz* is often thought as a wife's

disobedience towards her husband, but this singular definition is problematic in Imām law. *Nushūz* is not only disobedience towards a spouse (which goes both ways) but disobedience and recalcitrance vis-à-vis God and his commands. *Nushūz* is usually defined in the following manner:

> The exiting of one of the spouses from obedience [vis-à-vis the right] of the other is called *nushūz* because through the spouse's sinful state (*māʿṣiyah*) he/she elevates and exalts himself/herself vis-à-vis what God made incumbent on him/her.[328]

There are two major grounds in which a man may be considered a *nāshiz* (fem. *nāshizah*), either by denying his wife her nightly allotment or her sustenance (*nafaqah*). This is in addition to denying her sex for extended periods of time, that is, the standard four-month limit.[329] Even if the husband denies his wife the sub-duties of *qasm*, he will still be liable to *nushūz*. For example, as mentioned earlier, it is not enough for a man to spend the night in the same house as his wife. He must spend the night in bed with her while facing her (without turning his back towards her) and he must be close enough where she can feel the warmth of his body. If the husband denies the wife any of *qasm*'s sub-duties, he is liable to *nushūz*. Similarly, a man may be considered *nāshiz* if he denies his wife even part of her right to sustenance. For example, if a man provides his wife with most of her needs but does not provide his wife with appropriate clothing for the season, or any other service or object which women customarily receive despite being able to provide it, then he is also liable to *nushūz*.

---

[328] Muḥammad Fāḍil al-Lankarānī, *Tafṣīl al-Sharīʿah fī Sharḥ Taḥrīr al-Wasīlah (al-Nikāḥ)*, Ḥusayn Wāthiqī (Qum: Markaz-i Fiqhī-i Aʾimmah-yi Aṭhār, 1421/[2000-2001]), 481. Exact or similar definitions are quite widespread in Imāmī law, see for example Shams al-Dīn Muḥammad al-Ḥillī, *Maʿālim al-Dīn fī Fiqh Āl Yāsīn: Dawrah Fiqhīyah Kāmilah ʿalā Wifq Madhhab al-Imāmīyah*, 2 vols., ed. Ibrāhīm Bahādurī (Qum: Muʾassasah-yi Imām-i Ṣādiq, 1424/2003), II, 79; al-Shahīd al-Thānī, *Masālik al-Ifhām*, VIII, 354; Yūsuf al-Baḥrānī, XXIV, 614; al-Subḥānī, *Niẓām al-Nikāḥ*, II, 298.

[329] This gap in time may be reduced if the wife shows proclivity to sin.

In such a situation, a woman must first warn her husband to meet his responsibilities and desist from sinning. If the husband does not pay heed to her warnings, she can then take her husband to court and the judge (*ḥākim*) may compel him to meet his responsibilities and stop sinning. If the husband refuses to meet his responsibilities after the judge's order, or if he undertakes them grudgingly and behaves badly with her, or exacts revenge by bothering or harming her somehow (e.g. hitting her, insulting her), then the judges subjects the husband to discretionary punishment (*taʿzīr*) which is usually between one to seventy-nine lashes in Imāmī law.[330] If the husband still persists in his *nushūz*, the judge then forces a divorce.[331] It is common for jurists to also categorize physical abuse (or continuous verbal abuse) as *nushūz* even if the husband is fulfilling his obligations since part of his marital responsibilities and duties is to be respectful, kind and uphold proper manners (*adab*) with his wife. The physical punishment of the husband through lashes, like the punishment of a recalcitrant wife (*nāshizah*), is justified and enacted through the principle of Commanding the Good and Forbidding Evil.[332]

As a *munkar,* the act of male *nushūz* is soteriologically problematic. When the responsibilities of *qasm* are not met, the wife may not have her intimate and emotional needs

---

[330] Al-Shahīd al-Thānī, *Rawḍah al-Bahīyah*, V, 429; *Masālik al-Ifhām*, VIII, 354; Yūsuf al-Baḥrānī, XXIV, 619; Ḥusayn al-Baḥrānī, *al-ʿAnwār al-Lawāmiʿ fī Sharḥ Mafātīḥ al-Sharīʿah*, 6 vols., ed. Muḥsin Āl ʿAṣfūr (Qum: Majmaʿ al-Buḥūth al-ʿIlmīyah, n.d), X (part 1), 122; al-Najafī, *Jawāhir al-Kalām*, XXXI, 207; Abū al-Ḥasan al-Iṣfahānī, *Wasīlat al-Nijāt*, commentary by Rūḥ Allāh Khumaynī (Qum: Muʾassasah-yi Tanẓīm wa Nashr-I Āthār-i Imām Khumaynī, 1422/[2001-2002]), 756; Khumaynī, *Taḥrīr al-Wasīlah*, II, 306; *Zubdat al-Aḥkām* (Tehran: Sāzmān-i Tablīghāt-i Islāmī, 1404/1983), 207; ʿAbd al-ʿAlā al-Sabzawārī, *Muhadhdhab al-Aḥkām*, XXV, 225; Muḥammad Riḍā al-Gulbāygānī, *Hidāyat al-ʿUbbād*, II, 368; Zayn al-Dīn al-Baṣrī al-Baḥrānī, *Kalimat al-Taqwā*, 7 vols. (Qum: Sayyid Jawād Widāʿī, 1413/1993), VII, 136; al-Lankarānī, *Tafṣī al-Sharīʿah*, 487; al-Sīstānī, III, 109; Muḥammad Āṣif al-Muḥsinī, *al-Fiqh wa Masāʾil Ṭibbīyah*, 2 vols. (Qum: Intishārāt-i Daftar-i Tablīghāt-i Islāmī, 1424/2003), I, 274. For a discussion on the Imāmī view of *taʿzīr* and lashes concerning male *nushūz*, see Qudrat Allāh Wijdānī Fakhr's recorded seminary lectures on Shahīd al-Thānī's *Rawḍah al-Bahīyah* (Kitāb al-Nikāḥ) published by Ganjīneh Maʿrifat.

[331] See for example Ḥusayn al-Baḥrānī, *al-ʿAnwār al-Lawāmiʿ*, V, 429; al-Sīstānī, III, 109.

[332] ʿAbd al-ʿAlā al-Sabzawārī, *Muhadhdhab al-Aḥkām*, XXV, 225.

met thus putting her in a situation where she would be more likely to end her marriage or opt for zinā. *Nafaqah* ties into the jurist's soteriological concerns as it is the essential basis for the family unit to function and survive. As a general rule, the wife is assumed by the law to depend on her husband for sustenance which includes clothing, food and shelter in addition to customary necessities and luxuries that are supposed to maintain comfort and satisfaction in marital life. Without *nafaqah*, the wife will either not be able to survive or live a difficult life. None of these options, if imposed on purposefully, contribute to the wellbeing of marriage. First, for the wife to fully her function as a healthy spouse, she must be able to maintain proper physical and emotional health. Second, Imāmī jurists believe that continued states of bitterness brought about by male *nushūz* may encourage the wife to leave the marriage altogether, either through legal means or through desertion or by committing adultery. In cases when *nafaqah* ceases, Imāmī law gives women the option to initiate an obligatory divorce, even if it runs against the husband's wishes. Without the wife, there can be no marriage and by extension, the community will lose the principal mechanism that protect believers from illicit sexual behavior. The community will also lose its main source for creating and maintaining soteriologically sound offspring. The rules of male *nushūz*, or *nushūz* in general, are meant to maintain marriage and the wife's status as an object of salvation.

In short, *nushūz*, as jurists define it, is an act of arrogance vis-à-vis what God makes obligatory on husbands. It is a challenge to marital harmony and encourages its breakdown. As an evil or *munkar*, it is a moral transgression not only against the believing community, but also against God. By employing the principle of Commanding the Good and Forbidding Evil, jurists attempt to ward off evil and do damage control. The *ta'zīr* or discretionary punishment, being the result of this principle, is a disciplinary technique intended to rectify male

rebelliousness against his own salvation, that of his wife and the salvation of the believing community.

The severity of the punishment, as compared to a 'light striking' of the wife, does not suggests that male *nushūz* is more problematic than female *nushūz*. The punishment's severity is in response to the coming about of actual *nushūz* and not its mere possibility. When Imāmī law speaks of punishing female *nushūz*, it is in response to *potential nushūz* and not its actualization.

## 4.3: THE FEMALE NĀSHIZAH: THE SOTERIOLOGY OF DENYING SEX

The only forms of female obedience that are normative to Imāmī law are obedience in sex and not leaving the home without the husband's permission. On the latter, however, the idea that women must also obey their husbands when it comes to leaving the house is mired in controversy. The only agreement is that a husband may forbid his wife from leaving the home if her exiting is for sinful purposes, or if her leaving the home interferes with her sexual duties to her husband.[333] As such, even in relation to exiting the home, female *nushūz* is largely relevant to sexual disobedience or other forms of sinful travel.

The majority of discussions on *nushūz* in the Imāmī tradition usually revolve around sexual denial and only secondarily on exiting the home. What most juristic texts are concerned with are the *signs* of *nushūz* that may possibly lead up to the outright denial of sex and much less about the exiting of the home without the husband's permission. When it comes to sexual disobedience, the Qur'anic narrative (in the juristic perspective) is primarily concerned with avoiding it in the first place. For this reason, Imāmī jurists are meticulous in outlining a

---

[333] Makārim Shīrāzī, *Kitāb al-Nikāḥ*, 119-124.

number of warning signs that may lead to *nushūz* which they term as the "signs (*amārāt*) of *nushūz*." As Imāmī jurists understand it, these signs usually come about in response to the husband's call, intention or expectation for sex. The warning signs include, among other things, the scowling of the face (*taqṭībahā fī wajh*) as well as discontent (*tabarrum*). It also includes a state of annoyance (*ḍajar*) and boredom (*sāʾm*) during his advances (*muqaddimāt al-istimtāʿ*) in so far as she refrains or acts sluggish (*tatathāqala*) when he calls her to sex. If a constant state of boredom, sluggishness and annoyance is simply part of her personality and is not in response to sexual advances, then her behavior will not be associated with *nushūz*. However, if her attitude changes when he makes his advances (like those mentioned above) or if she adopts a bad tone, or becomes rude after advances are made whereas before the advances she was cheerful and kind, then this counts as a sign of *nushūz* as well.[334] The signs of *nushūz* may also be indirect. If the wife senses that the husband will make advances and she takes the effort in shunning or avoiding him in order to avoid sex, then this will be counted as a sign of *nushūz*. Repeated excuses and repeated delay without valid reason may also be interpreted as a sign of *nushūz*.

How the husband is supposed to handle his fear of *nushūz* is outlined in the Qurʾan, which is generally followed step by step by Imāmī jurists. Q4:34, known as the verse of *nushūz*, states the following:

> Men are the maintainers of women by virtue of what God has favored some
> over others and with what they spend out of their wealth. The righteous
> women are devoutly obedient who guard [the intimacy of their husbands] in
> [their] absence which God has [ordained] to be guarded. As for those whom
> you [have reason to] fear *nushūz*, the admonish them [first;] then leave them in
> their beds; then strike them (*aḍribuhūnna*). Then if they obey you, do not seek
> to harm them. Truly God is the Most High, Great!

---

[334] Al-Shahīd al-Thānī, *al-Rawḍah al-Bahīyah*, V, 427-429.

There are no substantial differences between Imāmī exegetes concerning the meaning of the above verses. The only divergence seems to be over the interpretation of "by virtue of what God has favored some over others" (*bi-mā faḍḍala Allāhu baʿḍahum ʿalā baʿḍ*). The divergence is mostly between older exegetes (before the mid-twentieth century) and late twentieth and twenty-first century scholars. But even this divergence seems mostly to be the result of euphemisms to avoid offending a modern readership base rather than a fundamental shift in interpretation.

Al-Ṭūsī writes that men are maintainers of women in so far as disciplining them (*taʾdīb*) and managing their affairs (*tadbīr*) is concerned. The virtue by which God has favored men over women is in intellect (*ʿaql*) and soundness of opinion (*raʾī*).[335] By intellect, the context seems to suggest that they are lesser in intellect as far as worldly matters are concerned and not their ontological relationship with God. Al-Ṭabarsī does not deny that women have intellect or bodily and disciplinary strength to manage affairs in general or to manage those of their own, but he explains that men are just naturally *superior in virtue* (*ziyādat al-faḍl*) to women. This superiority is in all major respects, including intellect, managerial power, soundness of opinion, resoluteness (*ʿazm*) and knowledge (*ʿilm*), and hence explaining why men are the maintainers of women.[336] Fayḍ al-Kashānī follows the same line of argument of his predecessors, including men's superiority in physical endurance for religious rituals and activities (*quwwah fī al-ʿamāl wa al-ṭāʿāt*) which again for him explains why men are the maintainers of women[337] This last part may suggest that superior physical strength and endurance (as a general masculine trait) are reasons for prioritizing males for familial

---

[335] Al-Ṭūsī, *al-Tibyān*, III, 189.
[336] Al-Ṭabarsī, *Majmaʿ al-Bayān,* III, 68.
[337] Al-Kashānī, *Tafsīr al-Ṣāfī*, I, 448.

leadership as men can do more arduous tasks, both worldly and spiritual. ʿAlī b. Ibrāhīm al-Qummī (d. 329/919) is one of the few exegetes who does not make reference to women's deficiency, but states that superiority is in terms of a man's responsibility for providing sustenance.[338] What God has "favored" men with is therefore financial power.

Modern Imāmī exegetes of the Qurʾan roughly follow al-Ṭūsī's line of thought, except that they choose to elaborate on and justify traditional Imāmī assumptions in order to make them more palpable and acceptable to some of their modern readers who may have reservations with the dominant Imāmī understanding of gender relations and femininity.

The twentieth century exegete, Muḥammad Ḥusayn Ṭabāṭabāʾī, represents the dominant discourse of twentieth and twenty first-century Imāmī exegesis. He writes that the favor is in reference to men's higher power of intellect and judiciousness (*quwwat al-taʿaqul*). Ṭabāṭabāʾī also adds that the 'favor' is also in reference to men being physically stronger and having more endurance, both physically and mentally. He justifies this claim to his modern readers by writing that women lead a life where they are more subject to, and driven by, their emotions (*ḥayāt iḥsāsīyah*) due to their gentleness (*riqqah*) and their delicateness (*liṭāfah*). "Men are the maintainers of women," the author argues, is not restricted to husbands only, but is stating a general principle about men being maintainers of women in all affairs.

Ṭabāṭabāʾī explains that this is true to all major aspects of human social life like government rule (*hukūmah*) and judgeship (*qaḍāʾ*). His usage of these two examples are quite telling. Mainstream Imāmī law forbids women from taking up positions as rulers (e.g. kings, emperors) or judges based on a Prophetic tradition that states "no nation shall be successful if

---

[338] ʿAlī b. Ibrāhīm al-Qummī, *Tafsīr al-Qummī*, I, 137.

it is led by a woman.[339]" Only a minority of Imāmī jurists permitted women to assume these

positions, most of whom have been modern.[340] From the household to strategic social and

military planning, authority belongs to men. Ṭabāṭabāʾī goes beyond his predecessors by

arguing that this verse is stating a rule within human nature where men, as more rational

beings, are to preside and have greater authority over women whom are more emotional than

rational. Authority in this respect is therefore unrestricted and comprehensive (*iṭlāq tāmm*).[341]

At this point, Ṭabāṭabāʾī is careful to stymie the full implications of his discourse.

Despite the vastness of male authority, Ṭabāṭabāʾī insists that these power relations, as

demonstrated in the verse "the righteous women are devoutly obedient," does not negate a

woman's independence (*istiqlāl*)[342] both in her individual free will (*al-irādah al-fardīyah*) and

her daily activities. She may, for instance, decide or act as she wishes and her husband has no

right to interfere except for matters that pertain to immoral and evil conduct (*munkar*). For

Ṭabāṭabāʾī, the verse does not mean that the wife loses her ability to manage her life, finances,

property or the freedom to her own personal and social life. When a husband does indeed

provide for his wife (that is, from what he "spends out of his wealth,") the obedience that is

expected is sexual obedience. Ṭabāṭabāʾī's switch to the legal implications of the verse from

his earlier discussion on men's social authority over women is not simply a change in topic or

---

[339] The tradition itself is not originally Shīʿī but from Sunnī sources instead. Despite its origins, it has been popular among many Imāmī jurists as it is one of the few pieces of evidence from the source-texts that supports the common Imāmī position which, on its own, is primarily derived through "consensus" (*ijmāʿ*), a controversial and multi-layered concept in Imāmī law.

[340] One of the few exceptions has been Aḥmad b. Muḥammad al-Ardabīlī (d. 993/1526) who argued that women could become judges as long as they judged over a female audience, or more specifically, when the witnesses are females only. The prohibition of women becoming judges, in his view, seems to be driven by concerns for modesty and women's presence in front of men. See Aḥmad b. Muḥammad al-Ardabīlī, *Majmaʿ al-Fāʾidah wa al-Burhān fī Sharḥ Irshād al-ʾAdhhān* (Qum: Daftar-i Intishārāt-i Islāmī, 1430/2009), XII, 15.

[341] Ṭabāṭabāʾī, *al-Mīzān fī Tafsīr al-Qurʾān*, IV, 343.

[342] Ibid., 344

scope, but it is indicative of how far one may materialize Qurʾanic meaning into the lived world and make it legally binding.

In Imāmī exegesis, there is a distinction between two kinds of commentary, the first being the general understanding of the author and the possible meaning of a verse (or group of verses) and the second being the legal signification of the verse. For the former, authors are free to suggest at a greater freedom what the verse may mean. In this sense, the authors may delve into a wide array of discussions (be they philosophical, social, economic etc.) with little restriction as their interpretations have few "practical" implications in the realm of the law. This is what Ṭabāṭabāʾī is doing in his discussion of men's authority over women. For most of the Imāmī tradition, if women were women political authority as a binding rule, it was on the basis of juridical consensus (*ijmāʿ*) and ḥadīths, not Q4:34.

For this reason, whatever theoretical opinions the authors may express in this regard may not *necessarily* translate into how the verse is understood and applied within the practice of the law. This is because putting ideas into practice within Islamic law must go through a more strenuous process. Law, as many Imāmī jurists understand it, is not a realm of personal opinion (*ideally* speaking), preference and or even arbitrary interpretation, but of strenuous filtering of possible options, source-texts and the evidentiary value of the relevant legal arguments and source-materials. This does not mean that it is an objective standard for assessing religious claims. The discursive standard is a juristic creation which developed over the centuries which most Imāmī jurists, as a guild, usually abided by as the least fallible means for extracting law from the Qurʾan.

A critical theme to look at in this discursive standard is the treatment of ḥadīth assessments within the *tafsīr* and *fiqh* traditions. In general practice, only a minority of Imāmī

scholars historically assessed the reliability of the chains of transmissions of the traditions they used in supporting the meaning of the Qurʾan. The science of assessing ḥadīth transmitters (*ʿilm al-rijāl*) and ḥadīths in general (*ʿilm al-ḥadīth*), at least with those Imāmīs who accepted the validity of this science, was largely in the realm of law and not general Qurʾanic commentary. It is therefore of no surprise that we often find conflicting accounts by the same jurists between what a verse says in *fiqh* and what it says in *tafsīr*. As a general rule, the implications and signifying scope of verses in Islamic law are significantly more restricted. Similarly, a ḥadīth may have personal appeal or be cited in a work of ḥadīth, but it will have no bearing in a jurist's conclusions in *fiqh*.

The evidentiary standards of the law are what filter the signification of the Qurʾan, the ḥadīths and, to a large extent, the way how claims about human nature and the world are understood. Perhaps the most prominent case of a hardly held assumption being watered down by the evidentiary standards of the law is the question of whether or not non-Imāmīs may be considered Muslim. Al-Khūʾī once stated that:

> …there is no doubt in their disbelief (*lā shubhah fī kufrihim*) as rejection of *wilāyah* and the Imāms, even a single of them, and belief in the successorship (*khilāfah*) of other than them, and [the assuming of] superstitious beliefs, like belief in predestination (*jabr*) or things of that sort, makes disbelief (*kufr*) and heresy (*zandaqah*) necessary upon them. The proof of this is in the oft-reported traditions that are explicit in the disbelief of those who reject *wilāyah*…[343]

Al-Khūʾī's discussion takes place on a commentary of Murtaḍā al-Anṣārī's (d. 1864) legal text *Kitāb al-Makāsib*, a central seminary text on commercial law. In this passage, he argues for the heresy of non-Shīʿīs, particularly Sunnīs, and the possibility of their status as non-Muslims (*kuffār*). His earlier discussion begins with a distinction between basic Muslims and faithful believers (*muʾminīn*). Non-Imāmīs are excluded from the latter. The distinction between a

---

[343] Al-Khuʾī, *Miṣbāḥ al-Faqāhah*, 7 vols., ed. Muḥammad ʿAlī Tawḥīdī (np, nd), I, 324.

generic Muslim (non-Imāmī Shīʿī) and a faithful believer (Imāmī Shīʿī) is quite common in Imāmī juristic discussions. However, what is less common is how al-Khūʾī's argument unravels to the point where he pushes for the excommunication of non-Imāmīs from not only *imān* but of *islām* itself. This is evident from his permission of cursing (*laʿan*) and the stripping of protection rights (*ʿiṣmah*) of those who don't believe in Imāmism, a form of excommunication which Imāmī jurists usually reserve for groups who show explicit enmity (*naṣb*) towards the Imāms.

Despite his statement on the availability of traditions on the subject, the sources, nor their possible signification (*dalālah*), nor his own personal reflections, meet the evidentiary standards that could justify a *fatwā*, that is, a final binding verdict that would give life to his assumption. Whatever al-Khūʾī may have personally thought, Imāmī jurisprudence restricted the scope and materialization of his personal assumptions and the kinds of claims he could conclude in the law. This is why in his published treatises on the law, al-Khūʾī considers Sunnīs as Muslims (despite his views above) and does not strip them of any rights. He only forbids marriage with non-Imāmī males if there is fear that a Shīʿī woman may be deviated as a result of her husband's influence.

The signification of Qurʾanic verses is also treated in the same way. An exegete is welcome to make any reasonable assumption, but he is not free to make any conclusive legal claims, no matter how reasonable they may be. The evidentiary standards of the law remain supreme, even in Qurʾanic exegesis.

The principle of Commanding the Good and Forbidding Evil is, however, on a different plain. It is a soteriological claim on the law that cannot be watered down by jurisprudential filters. This is because Commanding the Good and Forbidding Evil is itself a jurisprudential

filter as it is considered to be a normative and essential characteristic of Islam by the jurists. It is thus an ingrained and fundamental aspect of the law and as such, it is one of the few theological and soteriological claims that can be used to interpret and *expand* the exegetical meaning of a verse.

Going back to Q4:34, the major normative interpretive conclusion the Imāmī discursive tradition can make on the verse in so far as what obedience (*the righteous women are devoutly obedient)* and *nushūz* mean is sexual obedience and obedience in movement; the latter mostly going back to sexual obedience as well. Despite his earlier views, Ṭabāṭabāʾī concludes that sexual relations (*istimtāʿ*) and sexual obedience are the main derivatives of the verse. Where women are to remain faithful to their husbands when they are absent is above all in reference to abstention from adultery.[344] The rest of the verse is in connection with the *fear* of *nushūz*, which in this context is not only fear of adultery, but more so denial of sex (*nushūz* itself) which may be preceded by a grudging acceptance of sex on the part of the wife. The husband is asked to take a three step approach which must be followed in the following order.

On the basis of Q4:34, the husband is first asked to admonish his wife for her behavior. If admonishing does not work, then he must leave her bed. Ṭabāṭabāʾī, like other Imāmī exegetes, says that the verse does not mean that he should leave the bed physically, it means that he can turn his back towards her in bed and ignore her. If these two steps fail, then the husband is permitted to strike her (*ḍarb*). According to Imāmī tradition, *ḍarb* is in reference to 'striking gently or lightly,' usually with a toothpick or a toothbrush. No strike is allowed on the face or any other sensitive part of the human body such the genitalia. The gentleness of the

---

[344] Ṭabāṭabāʾī, IV, 344.

strike (*rafīqan, ghayr shadīd, ghayr mubarriḥ*) with a toothbrush (*siwāk*), or an object similar

to it, is nearly a normative recommendation in Imāmī law.[345] If any mark is left on the wife's

skin, such as a bruise or even slight redness, the husband will be liable to blood-money

(*diyyah*) or judiciary punishment. It is not uncommon among Imāmī jurists to consider the

"gentle" strike, not as a punishment, but a symbolic act of benevolent compassion (*mulāṭafah*)

to prevent the wife from the sin of *nushūz*[346] and hence keep her on track to salvation. Others

have allowed gradual punishment until the wife desists from her problematic behavior, but

again, it is within the lines of light strikes with a toothbrush, or beginning with the

toothbrush[347] while others have initially considered its permissibility, but based on legal

precaution (*iḥtīyāṭ*), have not allowed its gradual increase in severity. [348] As Imāmī jurists view

bodily or physical punishment, its purpose is to discipline (*ta'dīb*) her so as to prevent an evil

and damning act (*munkar*) from her part that may put her, her husband and the community in

danger. Mainstream Imāmī law contextualizes the Qurʾanic discussion of beating within the

framework of Q3:104[349] which states:

---

[345] See for example ʿAlī b. Mūsā al-Riḍā (attrib.,) *Fiqh al-Riḍā*, 245; al-Ṣadūq, *al-Muqniʿ*, 350; *Man Lā Yaḥḍuruhu al-Faqīh*, III, 521; al-Mufīd, *al-Muqniʿah*, 518; Aḥmad b. Muḥammad al-Ardabīlī, *Zubdat al-Bayān fī Aḥkām al-Qurʾān*, ed. Muḥammad Bāqir Bihbūdī (Tehran: al-Maktabat al-Jaʿfarīyah li-Iḥyāʾ al-Āthār al-Jaʿfarīyah, n.d), 537; al-Fayḍ al-Kāshānī, *Mafātīḥ al-Sharāʾi*, II, 301; al-*Wāfī*, XXII, 879; Al-Baḥrānī, *Ḥadāʾiq al-Nāḍirah*, XXIV, 618; *al-Anwār al-Lawāmiʿ*, X, 116; al-Shushtarī, IX, 135; ʿAlī b. Muḥammad al-Ḥāʾirī al-Ṭabāṭabāʾī, *al-Sharḥ al-Ṣaghīr fī Sharḥ Mukhtaṣar al-Nāfiʿ*, 3 vols., ed. Mahdī Rajāʾī (Qum: Intishārāt-i Kitāb-khānah-yi Āyat Allāh Marʿashī Najafī, 1409/[1988-1989]), II, 397-398; *Rīyāḍ al-Masāʾil*, XII, 93; Taqī al-Ṭabāṭabāʾī al-Qummī, *Mabānī Minhāj al-Ṣāliḥīn*, 10 vols., ed. ʿAbbās Ḥājīyānī (Qum: Manshūrāt Qalam al-Sharq, 1426/2005), X, 219.

[346] See for example Muḥammad al-Iṣfahānī (al-Majlisī al-Awwal,) *Rawḍat al-Muttaqīn fī Sharḥ Man Lā Yaḥḍuruhu al-Faqīh*, 14 vols., ed. Ḥusayn Mūsawī Kirmānī, ʿAlī Panāh Ishtihārdī, Faḍl Allāh Ṭabāṭabāʾī (Qum: Muʾassasah-yi Farhang-i Islāmī-i Kūshānbūr, 1406/1986), IX, 133.

[347] See for example Al-Najafī, *Jawāhir al-Kalām*, XXXI, 206.

[348] See for example al-Ḥāʾirī al-Ṭabāṭabāʾī, XII, 93; *al-Sharḥ al-Ṣaghīr fī Sharḥ Mukhtaṣar al-Nāfiʿ*, II, 397-398; *Rīyāḍ al-Masāʾil*, XII, 93.

[349] The mainstream position is briefly discussed in al-Najafī, *Jawāhir al-Kalām*, XXXI, 206; although al-Najafī doubts the linking, he has avoided rejecting it nevertheless. Others, directly commenting on al-Najafī's hesitation, have insisted that the linking is beyond doubt given the overwhelming amount of evidence in Imāmī source-texts supporting this claim. See for example Muḥammad Ḥusaynī al-Shīrāzī, *Min Fiqh al-Zahrāʾ*, 5 vols. (Qum: np, 1428/2007), I, 137.

> and let there be a community [growing among you] inviting to [all that is]
> good (*khayr*), commanding what is good (*maʿrūf*) and forbidding what is evil
> (*munkar*), and it is they who will attain salvation (*mufliḥūn*).[350]

Only a minority of Imāmī jurists strictly, or primarily see spousal punishment as a means to

getting one's rights.[351] The linking of wife-beating with the implementation of Commanding

the Good and Forbidding Evil and hence salvation, is representative of the mainstream Imāmī

view that wife-beating is a mechanism for preventing sin and damnation. Not only is it meant

to prevent a wife from sinning, but it is there to ensure marriage remains as a mechanism to

prevent zinā and thus prevent its subversion through *nushūz*. As such, wife-beating or husband

flogging are disciplinary mechanisms for ensuring virtue in one's spouse and thereby

fashioning and sustaining piety in one's own self and the other.

The Imāmī exegete ʿAbd Allāh Jawādī Āmulī summarizes the mainstream, historical

Imāmī response to *aḍribūhunna* as follows:

> A just husband must forbid evil and must prevent her from sinning further and
> make her fulfill her legal obligations. Forbidding evil is obligatory (*wājib*)
> and who is it more appropriate for to implement, a stranger or a family
> member? It is self-evident that strangers should not have access to private
> family matters and people's intimacy. It is therefore the husband's [duty] to
> assume the responsibility of preventing the wife's sin [of sexual
> disobedience.] Some jurists have even issued a conclusive verdict (*fatwa*) that
> [for the sake of modesty] a husband may implement God's punishments
> during the time of [the Twelfth Imām's] occultation (*ghaybat*).
> What this means is that "maintenance" is God's dominion (*ḥukm*) over woman
> and not man's. As such, in these situations [where sexual disobedience is
> involved], a man disciplines his wife on the basis of [the principle] of
> "Forbidding Evil" (*nahī ʿan al-munkar*) and not in other cases, no matter how
> much she fails in performing her customary duties [that are outside the scope
> of *nushūz*.][352]

Makārim Shīrāzī elaborates further, stating:

> …if it is said that parallel to this rebellion and that transgressing [God's moral
> order] is possible with men, will husbands also be subject to such [bodily]

---

[350] *Mufliḥūn* is commonly translated as "those who are successful" as the root word *falaḥ* indicates success, or
more originally, bearing the fruits of one's labor after one plows (*falaḥa*) the land. As success is primarily
understood soteriologically, it is therefore more appropriate to translate the term as salvation.
[351] See for example Riḍā Madanī Kāshānī, *Kitāb al-Dīyāt* (Qum: Daftar-i Intishārāt-i Islāmī, 1408/1988), 45.
[352] ʿAbd Allāh Jawādī Āmulī, *Tasnīm: Tafsīr- Qur'ān-i Karīm*, 18 vols., ed. Ḥusayn Ashrāfī and Rūḥ Allāh Rizqī
(Qum: Markaz-i Nashr-i Isrāʾ, 1388 H.Sh/[2009-2010]), XVII, 561.

> punishment? We answer that indeed yes, just like women, when they
> backtrack on their responsibilities, they will also be punished, even bodily.
> However, since women are generally not able to undertake this task [due to
> being physically weaker], a judge is duty-bound to punish disobedient
> husbands in various ways, including discretionary bodily punishments (*taʿzīr*)
> until they meet their responsibilities again.[353]

Mainstream Imāmī law does not frame the punishment of a potential *nāshizah* as a man

exacting his power over his wife for transgressing against *him as a husband* per se. *Nushūz* is

only secondarily an infringement upon on husband's right. In Imāmī law, *nushūz*, like zinā, is

principally and in essence a crime against God. The interlinking between *nushūz* and zinā is

not accidental. As it was discussed in the first chapter of this study, zinā is both a soteriological

and ontological problem. Its status as a *major* corrupter of the human metaphysical heart poses

an ontological crisis as it separates the human soul (both individuals and collectively) from

God.

The telos of marriage in the Imāmī juristic imagination is to provide the Muslim

community with a metaphysically healthy and thus licit outlet for the soteriological operation

of sex and the bearing of legitimate and pious children which zinā subverts. Like male *nushūz*,

Imāmī law views female *nushūz* as a direct subversion of God's soteriological order for

humankind. When a wife denies her husband sex either directly or by purposefully being

unavailable by leaving the home, the husband (who is assumed to have compulsive sexual

desires) becomes more likely to engage in sinful behavior, either through minor acts such as

illicitly gazing at other women, or outright *zinā*. Although Imāmī law allows polygamy and

sexual relations with concubines, Imāmī jurists historically assumed that most men would not

be able to have such alternatives due to their financial costs. For most men, sex with women

---

[353] Makārim Shīrāzī, *Tafsīr-i Nimūnah*, III, 374.

had mostly two alternatives, one wife or zinā. Zinā was assumed to have no cost as it carried none of the financial obligations that permissible relations had.

The use of *aḍribūhunna* is a mechanism to *prevent* the actualization of *nushūz* and hence the subversion of humankind's harmony in this world and the next. The striking of the wife is not technically a *ḥadd* punishment, but it is nevertheless God's - and not the husband's - punishment. Judith Tucker outlines the communal relevance of *ḥadd* punishments:

> Whether we are dealing with flogging or stoning, public enactment was a central part of the punishment: this was a crime against God and against the harmony and order of the Muslim community. In designing punishment as public spectacle and community activity, the jurists underscored the community role in both proving and punishing this crime.[354]

Unlike zinā, potential *nushūz* is not a crime as it is not a sin that has been actualized against God and the community. As a result, its punishment is to remain hidden from communal knowledge especially considering that it is an issue of modesty and potentially embarrassing for the wife in question. *Aḍribūhunna* is a mechanism for "Forbidding Evil," but as matters of sex and intimacy have to do with modesty taboos in Imāmī law, mainstream Imāmism understands Q4:34 as allocating the responsibility of striking to husbands as they are the preferable means to both enact the Forbiddance of Evil while preserving the public modesty of his wife. This is seen as a better alternative to making recourse to judges and courts who represent communal involvement and the publicization of an intimate taboo. It is only when an action becomes fully manifest as a sin, as actualized *nushūz* or *zinā*, that God is transgressed against and the community is affected like the case of actualized male *nushūz* and hence the implementation of a discretionary punishment. In this case, the sin is dealt with as a communal matter, either through the enactment of divorce in public which Imāmī law, unlike Sunnī law, requires a minimum of two witnesses, or as a punishment for the community to see.

---

[354] Tucker, 187.

*Aḍribūhunna* is within the context of when a husband observes signs which may lead to *nushūz*. It is not an admission from the wife herself. If the wife herself fears becoming a *nāshizah* due to her dislike of her husband, the mechanism of Commanding the Good and Forbidding Evil may be enacted in the form of an obligatory divorce (*khulʿ*) which the husband may not contravene. This will be the subject of the following chapter.

**4.4: CONCLUSION**

Commanding the Good and Forbidding Evil functions in two parallel ways in marital soteriology. If the husband notices signs of potential *nushūz*, then he is the follow a multi-step process which ends by lightly striking his wife. Mainstream Imāmī law does not – as a primary principle - frame wife-beating as an extraction of a right from the wife (sexual obedience), but an act which God delegates to a husband to carry out on his behalf. The husband's appointment as God's discipliner is in order to make her obey God and not strictly the husband per se as *nushūz* is principally framed as obedience to God.  The discipline is delegated to the husband in order to prevent a wife from a sin that is not only damning to herself but to the community as well for it potentially opens the gates to illicit sexual activity and subverts God's moral order. In other words, *nushūz* defeats the purpose of marriage as a preventer of sin and the wife's body as an object of salvation. Wife-beating in the Imāmī tradition is a soteriological practice and functions to prevent sin and zinā and not to maintain a gendered hierarchy.

Men are also liable to *nushūz*, but Imāmī jurists usually do not discuss potential male *nushūz* or its signs as it may not be as obvious in their estimation as female *nushūz* is. As such, Imāmī jurists did not clearly outline a process through which a wife may detect "signs of *nushūz*" in her husband. Nevertheless, male *nushūz* in itself is also a subversion of God's

soteriological and moral order as it endangers the integrity of marriage and may push the wife to either end the marriage or embark in sinful behavior such as adultery. *Actualized nushūz* is a crime against God and the community, and since concerns for modesty do not figure into this sin, its punishment must therefore be meted out by the community. As a *nāshiz* is liable to public lashes, an actual *nāshizah* can be subject to the denial of *nafaqah* and the public act of divorce. Divorce in Imāmī law, by virtue of its requirement for witnesses, is essentially a public practice of soteriological and theological import. The commanding principle that animates all rulings of *nushūz* is the doctrine of Commanding the Good and Forbidding Evil.

The disciplinary regulations of *nushūz* also demonstrate another equally important concern; the salvation of the wife and husband. Imāmī law holds a number of legal punishments directed at Muslim subjects when they sin against themselves. A case in point is male masturbation which may carry a bodily punishment. The punishment is aimed at preventing salvific harm to the person in question and impelling – ideally speaking – the Muslim subject to reform himself in line with the pious ideals and saintly exemplars of the Prophetic tradition. Similarly, the laws of *nushūz* – for both males and females – are meant to reform the offending sinners and keep them in line, as much as possible, with the virtuous and pious ideals of spiritual and salvific cultivation.

CHAPTER FIVE

FINDING SALVATION IN WOMEN'S PREROGATIVE TO DIVORCE IN IMĀMĪ
SOTERIOLOGY

**5.1: INTRODUCTION**

My discussion of *khulʿ* divorce and soteriology is deliberately the most detailed and longest of

cases. Although there are other instances where soteriological concerns invert patriarchal

norms in Imāmī law as seen in previous chapters, nowhere is this inversion more expressed

than in *khulʿ* divorce. Divorce in Imāmī law, and in the whole of the Islamic discursive

tradition, is where male and female power relations find their greatest tensions and struggles.

Despite the differences of opinion among Imāmī and the four Sunnī schools of law, a common

theme among all of these traditions is how husbands have been granted significantly more

power to divorce than females across the Muslim juristic spectrum. This situation is not only

specific to Islam, but also similar in other legal traditions like some forms premodern or

modern orthodox Judaism.

Female initiated divorces like *khulʿ* are cases where tensions between male prerogatives

to divorce and women's dislike of their husbands or willingness to separate are most visibly

surfaced.  Divorce is where patriarchy manifests itself the most visibly and hence why the

inversion of this specific operation of asymmetrical power relation is the most significant as it

demonstrates that patriarchal practices and gendered hierarchies are not, for the most part,

essential and necessary features of Imāmī law. What is essential is that the law functions as a

soteriological means for preserving and cultivating the pious self. As long as the coherence of

Islam and its essential doctrines (both theological and legal) remained intact (e.g. the unity of

God, the prohibition of zinā etc.), Imāmī jurists were historically ready to invert almost any

gendered hierarchal practice in the law so that Islam – as a program for pious activity– may have continued to function as a technique for the growth of *īmān* and the cultivation of the virtuous self.

My previous discussions were strictly about Imāmī law with only minimal reference to Sunnī Islam. I also avoided discussing drawn out legal technicalities which I felt were secondary for the purposes I was trying to achieve. In this section, my approach is somewhat different. Here I offer a brief account of standard divorce (*ṭalāq*) and a detailed account of the technicalities of *khulʿ* in divorce law. I also make some reference to the Sunnī legal tradition by examining some of its secondary literature although this side reference is by no means an exhaustive outline of the Sunnī legal tradition.[355] My inclusion of these two levels of discussion are aimed at highlighting both the thick webs of legal technicalities involved as well as the related acuteness of patriarchy in divorce that make the granting of female initiated divorces seemingly difficult. My aim is to show that despite this hierarchal entrenchment, Imāmī concerns for salvation are enough to invert the most acute cases of gendered hierarchy even when the thick webs of legal technicalities make the task look almost impossible. As such, salvation and maintaining the Muslim subject's ontological bond with God through a pietistic psychology and the cultivation of a virtuous disposition takes precedence over patriarchy even in the most entrenched cases of divorce law.

A critical point here must be highlighted. The principle of Commanding the Good and Forbidding Evil, the default mechanism that allows this inversion, was not aimed at giving

---

[355] Any in-depth study of any one of the Sunnī traditions on divorce would require separate full volume studies on their own of which many currently exist. My purpose here has only been to demonstrate some of the technicalities involved in the Sunnī conception of divorce, especially *khulʿ* divorce in order to illustrate how male prerogatives are embedded in its legal structure. I am aware that the nuances in these traditions are much greater than what I portray here.

women equal rights for it is a telos that is wholly modern and irrelevant to most of the Imāmī

legal tradition. As it will be seen, the prerogative to divorce was a by-product of a juristic

endeavor to protect women from sin and ensure that Islamic law functioned as means for the

cultivation of the pious self. The integration of modernist notions of gender equality (and the

new spheres of power that come along with them) only surfaces in the twentieth century with

modernist jurists like Yūsuf Ṣaniʿī.


## 5.1.1: A QUICK LOOK AT STANDARD DIVORCE IN ISLAMIC LAW

*Ṭalāq* is the most common word associated with divorce or marital dissolution in Islam and in

the Muslim world.[356] Its root in Arabic is Ṭ-L-Q, the first verbal form indicates a state of being

'repudiated' (incidentally, the word can also mean to be 'happy' or 'joyful'). Its second verbal

form Ṭ-LL-Q means to 'set free', 'forsake' or 'release'. Its active verbal form *muṭalliq*

(repudiator) in Islamic law is always masculine; whereas its passive form, *muṭallaqah* (the one

being repudiated), is always feminine. Even the terminology of *ṭalāq* confirms that a wife may

never – in theory – actively repudiate her husband, but only be or seek to be repudiated by him.

The same conception of repudiation is present in Persian, where the active form of the verb

*ṭalāq dādan* (lit. 'to give a repudiation/divorce') is always conceptually masculine, whereas

*ṭalāq giriftan* (lit. 'to receive a repudiation/divorce') is always feminine.[357] *Ṭalāq* is thus the

---

[356] There are other less common types of divorce in Islam, such as *ẓīhār*, *ʿilā* and *wikālah*. *Ẓihār* is when the husband says to the wife "you are to me like the backside of my mother". One of the legal consequences of this phrase is marital dissolution. *ʿĪlā* is when the husband vows to cease sexual intercourse with his wife for the rest of his life, or for a period exceeding four months, which also entails consequences that can lead to marital dissolution. *Wikālah* (agency) or *tafwīḍ* (delegation) is where the right of marital dissolution, usually in the form of repudiation (*ṭalāq*) or annulment of the marriage contract (*faskh*), is delegated to the wife, who can then enforce a marital dissolution on her own behalf. This usually takes place under a Muslim judge (*qāḍī*) and its inclusion has become common in modern Muslim marriage contracts.

[357] I say conceptually as opposed to grammatically, as Persian grammar is gender neutral.

husband's unilateral right of repudiating his wife – with or without her consent - in order to bring about the dissolution of the marriage. Islamic law does not require any grounds for the husband to divorce his wife. Nonetheless, although there are no legal barriers to the husband divorcing his wife, marriage dissolution, and especially in its no-fault form, is considered reprehensible in Islamic law (*makrūh*) as it may potentially challenge and defeat the soteriological aims of marriage by ending a social mechanism designed to prevent sin. As an adult, especially an adult with potentially compulsive desires, remaining single presents a real danger for opening the doors to zinā when remarriage is not immediate or other licit female partners (wives, concubines etc.) are not available. As seen earlier, jurists assumed that monogamous relationships were the practical standard for most men. Only few had access to relationships outside of the confines of permanent and monogamous relationships.

*Ṭalāq* or repudiation is divided into two categories, the first of which is a revocable repudiation (*al-ṭalāq al-rajʿī*) and the other an irrevocable repudiation (*al-ṭalāq al-bāʾin*). A revocable repudiation does not immediately bring about marital dissolution, but simply starts the process in which, after the pronouncement of the divorce formula (*lafẓ al-ṭalāq*), the wife enters a waiting period (*ʿiddah*) of three menstrual cycles. During this time, the wife is to continue to live with her husband and receive maintenance from him until she enters or finishes (depending on the jurist) her last menstrual cycle. Once the waiting period is over, the marriage is finally dissolved. At this point, the now former wife is to receive any dower (*mahr*) still due to her, maintenance for the children she is legally responsible for, and any debt the husband has incurred from her. Theoretically, the process seems simple enough. However, it must be noted that historically, unilateral repudiations of this sort were not as common as one

would think for they were quite costly and in many instances led to financial ruin.[358] Although husbands did have the power to effect no-fault repudiations at will, practical considerations and consequences often limited their power.

The husband reserves the right to go back on his divorce and resume marital life before the waiting period elapses, with or without the consent of the wife. Additionally, if the couple resumes sexual intercourse, the divorce is automatically cancelled, even if getting back together was not the intention. As a result, the couple must start the process of repudiation all over again.

An irrevocable repudiation establishes the marital dissolution the instant the statement of repudiation is made. Although the wife must still observe a waiting period, this is only to determine the paternity of her child and be allowed to re-marry again once its time has elapsed. Furthermore, contrary to a revocable repudiation, the husband no longer has the right to approach her, be it during or after her waiting period, as the couple is no longer married.

Another mode of marriage dissolution in Islamic law is the annulment of the marriage contract (*faskh al-nikāḥ*). What fundamentally distinguishes a *faskh* and a *ṭalāq* is that the former does not count in the triple repudiation hence making *taḥlīl* - having to marry someone else, have intercourse with him and get divorced –unnecessary. Thus, one can theoretically dissolve one's marriage through annulment an infinite number of times without incurring the risk of having to go through a process of *taḥlīl* or being permanently barred from re-marrying again at the ninth instance of repudiation. The right to dissolve the marriage through annulment is only allowed in cases where there is: 1) a problem in the marriage contract itself which voids the marriage (e.g. if the couple finds out they were related in the prohibited degrees), 2)

---

[358] Wael Hallaq, Sharī'ah: *Theory, Practice, Transformations*, (Cambridge: Cambridge University Press, 2009), 190.

violation of a contractual stipulation (e.g. the husband taking the wife out of her native city) after this had been forbidden by a clause in the contract, 3) deceit (*tadlīs*) (e.g the wife having lied about her fertility), 4) a defect (*ʿayb*) on the part of either spouse that does not need to be stipulated in the contract. These defects can either be mental or physical. They can be general matters pertaining to both spouses such as insanity (*junūn*) and leprosy (*baraṣ/judhām*); matters relating specifically to men such as impotence (*ʿunnah*) and penile (*jabb*) or testicular (*khiṣāʾ*) castration, or matters relating specifically to women such as vaginal blockage (*ratq* and *ʿafal*) that makes intercourse difficult or impossible.

## 5.1.2: WHAT IS *KHULʿ* DIVORCE?

*Khulʿ* is generally understood as a negotiated form of divorce in which a woman forgoes her dower or other benefits in exchange for her husband's consent to marital dissolution. In the larger frame of Imāmī discourse, *khulʿ* is analogous to a contract that is contingent upon both the husband's and wife's acceptance. But this has only been at face-value. Like marriage, *khulʿ* divorce is nominally a contract. Like marriage, it plays a fundamental role in the salvation of the community and the prevention of damning sins.

    *Khulʿ* is rooted in KH-L-ʿ, meaning "to take off", "tear out" or "remove". The classical lexicographer Ibn Manẓūr (d. 711/1311) traces its original meaning to an act of removing sandals or clothes.[359] Ibn Manẓūr further explains that in its technical sense, it refers to a form of divorce in which the husband releases his wife through *khulʿ* if she gives him something of her wealth (*māl*) so that he in turn "divorces her and separates her from himself" (*fa-ṭallaqahā*

---

[359] Muḥammad b. Mukarram Ibn Manẓūr, *Lisān al-ʿArab*, 15 vols. (Beirut: Dār Ṣādir, 1414/1993), VIII, 76.

*wa-abānahā min nafsih*). According to Ibn Manẓur, the technical meaning of this term arises

from the Qur'ānic conception of husbands and wives being garments (*libās*) for each other.[360]

It therefore signifies an act of separation (*firāq*) akin to removing or tearing away these

garments from oneself.

  *Khulʿ* is not an independent category of divorce, but a subcategory of either one of two

types of marital dissolution in Islamic law; namely *ṭalāq* or *faskh*, that is, either a unilateral

divorce where a husband grants his wife her dower or an annulment of the marriage contract

whereby all obligations, including the dower, are annulled. The question of which category it

falls under is one of the most contentious technicalities of Islamic divorce laws. The

implications of which category it falls under are significant, as it will determine whether or not

the dissolution falls within the category of a triple divorce in which case the husband may no

longer be allowed to remarry his former wife unless she goes through the process of *taḥlīl*.

  There is a consensus amongst the Sunnī jurists that if *khulʿ* is pronounced along with

the formula of *ṭalāq* (*lafẓ al-ṭalāq*), it falls under the category of *ṭalāq*. However, if the *ṭalāq*

formula is not present, then the nature of the divorce becomes a matter of controversy.[361] In the

first instance, the four Sunnī schools consider *khulʿ* to be a *ṭalāq*; whereas in other works,

Aḥmad b. Ḥanbal and al-Shāfiʿī are reported to have considered it a *faskh*.[362] Ibn Rushd (d.

1198 CE) notes that *khulʿ* can be categorized as either and according to Abū Ḥanīfah,[363] it

---

[360] See Q2:187.

[361] *Al-Mawsūʿah al-Fiqhīyah,* [no author or editor named.] (Kuwait: Ṭibāʾat Dhāt al-Salāsil, 1410/1990), XIX, 237.

[362] Ibid; the disagreement seems to be the most significant amongst the Shāfiʿīs. It is widespread enough for even Ibn Manẓūr to mention it; see Ibn Manẓūr, *Lisān al-ʿArab*, VIII, 77. For the Ḥanbalīs, however, the opinion that *khulʿ* is a *faskh* seems to be more popular. The difference of opinion attributed to al-Shāfiʿī is in regard to his two sets of opinions in Iraq and later during his stay in Egypt. His later opinion seems to suggest that he believed *khulʿ* to be a *ṭalāq*.

[363] Ibn Rushd, *The Distinguished Jurist's Primer*, 2 vols., trans. Imran Ahsan Khan Nyazee (Reading: Garnet Publishing Ltd, 1996), II, 82.

depends on the intention behind the dissolution. The same disagreement also exists amongst

the Imāmīs, although the dissenting voice largely revolves around al-Ṭūsī. Despite the number

of Imāmī traditions that explicitly categorize *khulʿ* as *ṭalāq*,[364] al-Ṭūsī had opted to give

precedence to his interpretation of the Qurʾanic verses on the subject, so that he deemed *khulʿ*

to be *faskh*,[365] regardless of the consensus among Imāmī jurists that it was a *ṭalāq*. However, it

is also true that Imāmī jurists had opted to count *khulʿ* as a *faskh* in some special cases. For

example, ʿAllāmah al-Ḥillī argued that if the guardian of a child performed *khulʿ* on his behalf

based on *mahr al-mithl* (i.e. a dower that is befitting to the bride's social status), then it would

have counted as a *faskh*; otherwise the process would have been invalid.[366]

    The Imāmī juristic disagreement over whether *khulʿ* is a *ṭalāq* or annulment of the

marriage contract is centered on a specific understanding of Q2:229-230:[367]

> **A** [Revocable] divorce can only be done twice. **B** [Thus in marriage] let there
> be an honorable retention, or a compassionate release. And it is not lawful for
> you to take back anything from what you have given them [i.e. the dower],

---

[364] In one tradition, for example, al-Ṣādiq is reported to have said: "The waiting period of a woman separated through *khulʿ* is [the same as] the waiting period of a repudiated woman (*muṭallaqah*) and if he separates from her through *khulʿ* [then] he has repudiated her, and it is divided [so that it does not explicitly] need to be called a *ṭalāq*...and there remains two more *ṭalāqs* (*taṭlīqatayn bāqīyatayn*), as *khulʿ* is a *ṭalāq* ..."; see al-Ṣadūq, *Man Lā Yaḥḍuruhu al-Faqīh*, III, 523; al-Ḥurr al- ʿĀmilī, *Wasāʾil al-Shīʿah*, XXII, 284.

[365] Al-Subḥānī, *Niẓām al-Ṭalāq fī al-Sharīʿah al-Islāmīyah,* ed. *Sayf Allāh al-Yaʿqūbī al-Iṣfahānī,* (Qum: Muʾassasat Dār al-Imām al-Ṣādiq, 1414 /1993), 365; for al-Ṭūsī's full discussion on the matter, see al-Ṭūsī, *al-Khilāf*, 6 vols., ed. ʿAlī Khurāsānī and Sayyid Jawād Shahristānī (Qum: Daftar-i Intishārāt-i Islāmī, 1407/1986), IV, 424. In other works, al-Ṭūsī seems to have indicated that *khulʿ* could be considered a *ṭalāq* if it were followed by the 'divorce formula'. However, Subḥānī holds that al-Ṭūsī's view that *khulʿ* by default is a *faskh* (as he says in his *al-Khilāf*) is his official position. This is also confirmed by Muḥammad b. ʿAlī al-Mūsawī al-ʿĀmilī (d. 1600); see *Nihāyat al-Marām fī Sharḥ Mukhtaṣar Sharāʾiʿ al-Islām*, Muʾassasat al-Nashr al-Islāmī, 2 vols. (Qum: n.p, 1412/1992), II, 131.

[366] Ḥasan b. Yūsuf b. Muṭahhar al-Ḥillī, *Qawāʿid al-Aḥkām fī Maʿrifat al-Ḥalāl wa-al-Harām*, 3 vols., ed. Gurūh-i Pazhūhish-i Daftar-i Intishārāt-i Islāmī (Qum: Daftar-i Intishārāt-i Islāmī, 1413/[1992-1993]), III, 158.

[367] Another important cause of this dispute is the reliance on different narrations. Those who consider *khulʿ* a *faskh* rely on a tradition narrated by Ibn ʿAbbās, whereas the other group rely on several traditions narrated by ʿUmar, ʿAlī and Ibn Masʿūd that explicitly state that *khulʿ* is to be counted amongst the three *ṭalāqs*. See *al-Mawsūʿah al- Fiqhīyah*, XIX, 238. Another issue is whether the process is equivalent to ransom or sales transactions. Those who view the process of *khulʿ* as a *ṭalāq* see it see as a ransoming act, where the wife ransoms herself in order to free herself. According to them, acts of ransom are only applicable to repudiations and not sales. The other side considers the process similar to a sales transaction, thus automatically falling under the category of *faskh*, as annulments are characteristic of sales and not *ṭalāq*; see Ibn Rushd, II, 83. The Imāmīs also differ on this point. Although they consider *khulʿ* to be similar to or on the "same genre" as sales transactions (*manzilat al-muʿāwiḍah*), they nevertheless categorize it as a *ṭalāq*, despite classifying *faskh* in the same fashion.

> unless the married couple fear that they may not maintain God's bounds. So if you fear they would not maintain God's bounds, there is no sin upon them in what she may give to secure her release. These are God's bounds, thus do not transgress them, and whoever transgresses the bounds of God it is they who are the wrongdoers. **C** And if he divorces her then she will no longer be lawful for him until she marries a husband other than him. And if the other husband divorces her then there is no sin upon them if they [want to] get back together as long as they think they can uphold God's bounds. These are God's bounds which he makes clear for those people who know.

Whether Sunnī or Imāmī, the group of jurists who believe *khulʿ* to be an annulment argue that it would not be possible to understand this verse in light of *ṭalāq*, as it would be tantamount to allowing four consecutive divorces which is not possible in Islamic law. This is justified through the Qur'anic statement that, **A** already speaks of two divorces and **C** speaks of the third and last repudiation before *taḥlīl* becomes necessary. Therefore, if **B** was to be considered a divorce, **C** would be the fourth consecutive repudiation, which is not possible under Islamic law, as the law leaves no doubt that *taḥlīl* is necessary by the third.

The other group of jurists who understand the above verse as a repudiation argue that **B** is not a separate dissolution, but is a qualifier of **A**. In other words, **B** acts only as an expansion and explanation of the two divorces in **A** and is therefore not a divorce. The traditions on *khulʿ* in Imāmī traditions are generally uniform and explicit. The debate therefore becomes a matter of Qur'ānic exegesis only when al-Ṭūsī's opinion is discussed. [368] Nevertheless, al-Ṭūsī's position has been harshly criticized, and as far as I know, it has been unanimously rejected by Imāmīs. For example, al-Baḥrānī explains that there is absolutely no doubt (*lā shakk*) that al-Ṭūsī's argument is "weak," as the vast majority of traditions, and therefore Imāmī law, make it explicit that *khulʿ* is a *ṭalāq*. Thus, according to al-Baḥrānī, al-Ṭūsī's opinion is isolated in the Imāmī school.[369] Marriage in Islamic law can be understood as a transaction through which a

---

[368] See for example Jamāl al-Dīn b. Aḥmad b. Muḥammad al-Ḥillī, *al-Muhadhdhab al-Bāriʿ fī Sharḥ Mukhtaṣar al-Nāfiʿ*, 5 vols., ed. Mujtaba ʿArāqī (Qum: Daftar-i Intishārāt-i Islāmī, 1407/1986), III, 513.
[369] Al-Baḥrānī, *al-Ḥadāʾiq al-Nāḍirah*, XXV, 566.

woman sells or transfers the ownership of her vagina (*buḍʿ*) to the groom in exchange for a dower and *nafaqa*. *Khulʿ* in one sense can be categorized as a cancellation of that transaction, or as a new transaction in which a woman purchases her vagina back from her husband by giving him some form of compensation. It is in this light that some classical Imāmī jurists (i.e. before ʿAllāmah al-Ḥillī d. 1325/726) went so far as to say that a man should tell his wife during a *khulʿ* settlement that if "you would go back on what you gave, then I [will] own your vagina [again]" (*fa-anā amlik bi-buḍʿiki*),[370] referring to the retransfer of ownership of organs that the wife would have purchased back.

The wealth exchanged (*badhl*) for the vagina is given different names: *fidyah* (ransom), *hibah* (gift), or *ʿiwaḍ* (exchange). The ransom, gift or exchange is the basis on which the transaction (*muʿāwaḍah*) takes place, which allows the wife to free herself from the bonds of marriage (*qayd al-nikāḥ*). Valuation of the ransom/gift/exchange revolves around the wife's dower, which acts as a basic standard; although more or less than the stated dower may be demanded by the husband according to most jurists. All the Islamic legal schools trace the first instance of *khulʿ* and the nature of its exchange to a Prophetic practice described by ʿAbd Allah b. ʿAbbās, who is reported to have said:

> The wife of Thābit b. Qays came to the Prophet (peace and blessings be upon him) and said: "I do not fault Thābit in his faith (*dīn*) nor his character (*khulq*) except that I fear that I may oppose God (*kufr*)". He (peace and blessings upon him) replied: "will you give back to him his garden (*ḥadīqah*) that he had given you [as a dower]?", she replied: "yes". Then she gave it to Thābit and the Prophet ordered him to separate from her.[371]

---

[370] Ḥasan b. Abī Ṭālib al-Yūsufī Fāḍil Ābī, *Kashf al-Rumūz fī Sharḥ Mukhtaṣar al-Nāfiʿ*, 2 vols., ed. ʿAlī Panāh Ishtihārdī and Aghā Ḥusayn Yazdī (Qum: Daftar-i Instishārāt-i Islāmī, 1417/1996), II, 235.

[371] *al-Mawsūʿah al-Fiqhīyah*, XIX, 241 quoting from *Ṣaḥīḥ al-Bukhārī*. In other variants of the tradition, Thābit's wife specifies that she finds his height and color problematic and wants her marriage to be dissolved through *khulʿ*. The tradition suggests that the reason for divorce is her lack of attraction to him.

First, the tradition is significant on soteriological grounds. It demonstrates the Prophet granting

divorce to a woman based on her fear of opposing God through sin. The husband had nothing

wrong with him per se, yet her unhappiness may have led to disobedience. The report suggests

that maintaining and cultivating piety and virtue – which centers itself in obedience to God –

was the highest priority of the Prophet and Islam's program for the development of the pietistic

self. Through the practice of *khulʿ*, he sought to preserve her ontological bond with God whilst

possibly inverting her husband's say on the matter of divorce.  I will expand on the practice of

a forced *khulʿ* shortly.

In terms of the origins of the tradition, al-Baḥrānī notes that the tradition of Thābit b.

Qays's wife and its variants have only come in Sunnī sources and that he did not find the

tradition or its variants in Imāmī sources or reports (*akhbār*).[372] However, despite its absence

in Imāmī sources of ḥadīth, this Sunnī tradition has been widely accepted and utilized by

Imāmī exegetes and jurists.[373] Ibn Rushd states that Mālik and al-Shāfiʿī have allowed

compensation in a *khulʿ* settlement to be more or less than the stated dower.[374] Although he

does not mention the opinions of Abū Ḥanīfah and Aḥmad b. Ḥanbal, Mughnīyah states that

---

[372] al-Baḥrānī, *al-Ḥadāʾiq al-Nāḍirah*, XXV, 555.

[373] For example, he believes Thābit's tradition was the purpose behind the revelation of Q2:229, see al-Ṭūsī, *al-Tibyān fī Tafsīr al-Qurʾān*, II, 242. The tradition has also been widely utilized in works of law; see for example ʿAlī b. Ḥusayn al-Mūsawī (al- Sharīf al-Murtaḍā), *Masāʾil al-Nāṣirīyāt*, ed. Markaz-i Pazhūhish va Taḥqīqāt-i ʿIlmī (Tehran: Rābiṭat al-Thaqāfah wa-al-ʿAlāqāt al-Islāmīyah, 1417/1996), 352-354; Jamāl al-Dīn al-Miqdād b. ʿAbd Allāh (Faḍil al-Miqdād), *Kanz al-ʿIrfān fī Fiqh al-Qurʾān*, II, 284; Jamāl al-Dīn al-Ḥillī, *al-Muhadhdhab al-Bāriʿ fī Sharḥ Mukhtaṣar al-Bariʿ*, III, 507-508; Aḥmad b. Muḥammad al-Ardabīlī (Muqaddas al-Ardabīlī), *Zubdat al-Bayān fī Aḥkām al-Qurʾān*, 608; ʿAbd al-ʿAlā al-Sabzawārī, *Muhadhdhab al- Aḥkām*, 30 vols., ed. Muʾassasah-yi al-Manār (Qum: Daftar-i Āyat Allāh Sabzawārī, 1413/1993), XXVI, 179; Muḥammad Taqī al-Shushtarī, *al-Najʿah fī Sharḥ al-Lumʿah*, 11 vols. (Tehran: Kitab Furūshī-i Ṣadūq, 1406/1985), IX, 331. For contemporary sources, see for example Faḍil al-Lankarānī, *al-Ṭalāq, al-Mawārīth: Tafṣīl al-Sharīʿah fī sharḥ Taḥrīr al-Wasīlah*, ed. Ḥusayn Wāthiqī (Qum: Markaz-i Fiqhī-i Aʾimmah-yi Aṭhār, 1421/2000), 242. For instances where the traditions have been incorporated into Imāmī compilations of ḥadīth through Sunnī sources; see Mīrzā Ḥusayn Nūrī, *Mustadrak al-Wasāʾil wa Mustanbaṭ al-Masāʾil*, 18 vols., ed. Gurūh-i Pazhūhish-i Muʾassasah-yi Āl al-Bayt (Beirut: Muʾassasat Āl al-Bayt, 1408/1987), XV, 385-386.

[374] Ibn Rushd, II, 80.

they hold the same opinion.[375] The Imāmīs are also in agreement with the four Sunnī

schools.[376] Ibn Rushd, however, states that there are a number of jurists (whom he does not

name) who have taken up a stricter position by stating that the husband may not take more than

the stated dower, as that is what Thābit's tradition points to. Although there are other versions

of Thābit's tradition that allow one to take more than the stated dower,[377] the majority point

toward the Prophet's adherence to the dower only. This is also supported by the Qur'ānic verse

which sets the object of exchange as the dower: *it is not lawful for you to take back anything*

*from what you have given them unless you fear you may not uphold God's bounds*...where what

you have given them (*ataytumūhunna shay'an*) refers to the wife's dower (*mahr*).[378]

Nevertheless, the majority of jurists view the Prophetic practice and Qur'ānic injunction as

setting the dower as the standard, from which the couple may, however, agree to deviate

from.[379]

---

[375] Muḥammad Jawād Mughnīyah, *Al-Fiqh ʿalā al-Madhāhib al-Khamsah*, 2 vols. (Beirut: Dār al- Ṭayyār al-Jadīd: 1429/2008), II, 174.

[376] Ibid.

[377] Mirzā Ḥusayn Nūrī, *Mustadrak al-Wasā'il*, XV, 385.

[378] See for example al-Ṭabāṭabāī, *al-Mīzān fī Tafsīr al-Qur'ān*, II, 236.

[379] The dower is one of the important components of marriage and symbolizes the transaction through which the marriage contract is effected. The dower must be something that is pure and legally permissible to own (for example, the dower cannot be swine meat). It can consist either of property, some form of currency such as gold and silver, or profits derived from a legally acceptable source. The payment may take place before the consummation of the marriage or after the marriage has been dissolved, depending on the wife's own discretion. In nineteenth century Iran, Afary notes that the groom's family "paid the wife a small amount of mahriyeh [i.e. mahr] in advance, and the remainder was paid at the termination of the marriage, whether through divorce or death," see Afary, 41.  This is consistent with the common practice women deferring their claim to their dowers (or at least the larger part of their dowers) in order to use it as a deterrent against hasty repudiations, or even as a bargaining tool to secure certain interests. For example, for urban middle class women in Iran, the dower as a deterrent against divorce seems to have been the norm, see ibid. The threat of demanding the full amount during marriage was used in case the husband contemplated taking a second wife. However, the latter practice seems to have been largely restricted to upper-class families, see ibid., 42-43. The dower thus plays an important social role. In the case of Iran, Willem Floor observes that "[i]t represents the social standing of both families in the community and the value (or esteem) given to the bride. Today, some modern women consider the bride demeaning, but tradition as well as Koranic injunction (4:4) makes it impossible to do away with the custom. In fact, bride prices in general seem to have risen and are often expressed in an ever increasing number of gold coins to provide security against inflation," see Floor, 27.  Despite the legal approach, which is much preoccupied with proper valuation of the dower, most of the Islamic tradition has generally recommended that women ask for low dowers, as marriage should not be based on materialistic concerns. However, practical concerns have sometimes

## 5.1.3: OBLIGATORY *KHULʿ* IN SUNNĪ LAW

In a male-initiated divorce, a husband divorces his wife by paying her dower, unless it was paid during the marriage. The divorce is a unilateral act and does not require the consent of the wife, as it is not setting up a new contract but merely ending an already existing one. *Khulʿ* in the view of most jurists is analogous to a new transaction (rather the ending or cancellation of one) and analogous to a contract whereby a previously sold product (the vagina) must be purchased back. By definition, such a transaction (as opposed to cancellation) necessarily requires the consent of both parties. In other words, without the express consent of the husband or intervention of a judge, the wife has little recourse but to continue to be legally bound to her husband and forbidden from re-marrying. The predicament of a Muslim woman whose husband has refused to agree to her request for *khulʿ* is similar to that of the *agunah* or "chained wife" in Jewish law who must either refrain from remarrying and bear her status as a "married divorcee". The consensual nature of *khulʿ* thus established a means for dissolving marriage without the costs of a unilateral *ṭalāq*.

One of the characteristics of *ṭalāq* in Islamic law is that it is a male prerogative. For that reason, men are the only divorcers, whereas women can only be divorced. One famous

---

pushed them to demand higher dowers as a safety net; for example, in the contemporary world, the emergence of the nuclear family has meant loss of support of the extended family for divorced women, leading wives to seek security in substantial dowers. Thus, whereas high dowers were generally the practice of upper class women, today they have become the norm for many Muslim women. Furthermore, although the dower is used as a deterrent against hasty divorces, it has also been used as a bargaining chip for child custody. The *mahr* plays quite an important role in *khulʿ*. Mir-Hosseini, for example, notes that over fifty percent of all marital dissolutions in Tehran are *khulʿ* in which "by definition the wife forfeited her mahr," see Mir-Hosseini, *Marriage on Trial*, 82. In other words, *khulʿ* accounts for the largest number of divorces in Iran, and the *mahr* is the foundation of this important process. It is also noteworthy that although husbands are allowed to ask for more than the stated dower, such a practice does not seem to be customary. Nor is asking for more acceptable in the view of many Muslim judges, as allowing such would render the mechanism futile, since husbands could ask for an amount that would either bankrupt the wife or make it impossible for her to pay. The cases in which husbands are allowed to ask for more than the dower are when the agreed upon dower is of little worth. For example, it is not a rare practice amongst religious Iranian women today to state flowers or candy sticks (*shākh-i nabāt*) as a dower; in this case, adding to its worth is seen as more realistic.

Prophetic tradition that confirms this exclusive right states that "*ṭalāq* is for the one who took

the [wife's] leg" (*al-ṭalāq li-man akhadha bi-al-sāq*)[380] meaning that *ṭalāq* is for him who

married the woman and took her home to the exclusion of anyone else. Imāmī jurists

understand this tradition as meaning that initiating a repudiation (*ījād al-ṭalāq*) is the exclusive

right of the husband (*min ḥuqūq al-zawj al-khāṣṣah*).[381] However, this right can be delegated to

a Muslim judge (*al-ḥākim al-sharʿī*) against the husband's will if the legal principle of

Commanding the Good and Forbidding Evil or any one of its sister principles (*qāʿidat lā*

*ḍarar*, or *lā haraj*) are invoked. The circumstances that can cause this principle to be invoked

include cases in which the wife risks serious harm, whether physical or mental, or if the

husband fails to respect her rights[382] such as maintenance, sexual intercourse (at least once

every four months) and so on.

The major Sunnī schools enumerate five essential pillars of *khulʿ*, without which it

cannot take place: 1) the cause or trigger for *khulʿ* (*mūjib*), which is the husband or his

guardian, 2) the litigant (*qābil*), which is the wife or the one liable for the object of exchange

(*al- multazam lil-ʿiwaḍ/muʿawwiḍ*), 3) the object of *khulʿ* (*muʿawwaḍ*) which is the wife's

---

[380] Although the tradition is a Sunnī one, the tradition, as well as its variants are ubiquitously used in Imāmī sources, including in chapters on *ṭalāq* and *ʿitq* (manumission). See for example: Mughnīyah, *Fiqh al-Imām al-Ṣādiq*, 6 vols. (Qum: Muʾassasah -yi Anṣārīyān, 1421/2000), V, 103, VI, 50-51, Subḥānī, *Niẓām al-Ṭalāq*, 381; Muḥammad b. Ḥasan b. Yūsuf al-Ḥillī (Fakhr al- Muḥaqiqqīn), *Īḍāḥ al-Fawāʾid fī Sharḥ Mushkilāt al-Qawāʿid*, 4 vols., ed. Sayyid Ḥusayn Mūsavī Kirmānī and ʿAlī Panāh Ishtihārī (Qum: Muʾassasah-yi Ismāʿīlīān, 1387/1967), III, 145; Muḥammad b. Makkī al-ʿĀmilī (al-Shahīd al-Awwal), *Ghāyat al-Murād*, II, 283; al-Suyūrī, *Tanqīḥ al-Rāʾī li-Mukhtaṣar al-Sharāʾi* , 4 vols., ed. Sayyid ʿAbd al-Laṭīf Kūhkamarī (Qum: Kitābkhānah-yi Āyat Āllāh Marʿashī Najafī, 1404/1983), II, 287; al-Karakī, *Jāmiʿ al-Maqāṣid*, XIII, 79; Muḥammad Ismāʿīl b. Muḥammad Ḥusayn al-Māzandarānī, *al-Rasāʾil al-Fiqhīyah*, 2 vols., ed. Sayyid Mahdī Rajāʾī (Qum: Dār al-Kitāb al- Islāmī, 1411/1990), I, 27-28; Faḍl b. Ḥasan al-Ṭabrisī*, al-Muʾtalaf min al-Mukhtalaf bayn Aʾimmat al-Salaf*, 2 vols., ed. Mudīr Shānichī and Mahdī Rajāʾī (Mashhad: Majmaʿ al-Buḥūth al-Islāmīyah, 1410/1989), II, 191, 222; ʿAlī Muʾmin al-Qummī al-Sabzawārī, *Jāmiʿ al-Khilāf wa-al-Wifāq*, ed. Ḥusayn Ḥasanī Bīrjandī (Qum: Zamīnah Sāzān-i Ẓuhūr-i Imām-i ʿAṣr, 1421/2000), 467; Mullā Ḥabīb Āllāh Sharīf al-Kāshānī, *Tashīl al-Masālik ilā al-Madārik fī Ruʾūs al-Qawaʿid al-Fiqhīyah*,(Qum: al-Maṭbaʿah al-ʿIlmīyah, 1404/1993), 13.
[381] Ḥusayn al-Ḥillī, *al-Buḥūth al-Fiqhīyah*, ed. Sayyid ʿAlī Baḥr al-ʿUlūm (Beirut: Muʾassasat al-Manār, 1415/1994), 208.
[382] Ibid, 208-209; this right can also be given to the guardian (*walī*) of an insane husband under this principle, see Mūsa b. Muḥammad al-Najafī al-Khwānsārī, *Risālah fī Qāʿidat Nafī al-Ḍarar* (Tehran: al-Maktabat al-Muḥammadīyah, 1373/1953), 221.

vagina (*buḍʿ*), 4) the object of exchange (*ʿiwaḍ*) or dower, and 5) the legal *khulʿ* formula (*ṣīghah*) that must be pronounced in order for the transaction to be established. This last pillar of *khulʿ*, that is, the accepted formula, consists of an offer (*ījāb*) and acceptance (*qabūl*).[383] In other words, *khulʿ* cannot be valid if the husband refuses the offer for *khulʿ*, as a contract and transaction cannot be forced on a free individual. Therefore, the general position of the major Sunnī schools is that *khulʿ* cannot be made obligatory on the husband in its no-fault form. In its fault form, al-Jazīrī states that as *khulʿ* is a division of *ṭalāq*, and as a regular *ṭalāq*, it can be made obligatory if the husband fails to provide for his wife or cannot perform sexually (*ʿajz al-rajul ʿan al-infāq wa- al-ityān*).[384] As far as I have seen, only the Ḥanafīs and Mālikīs amongst the major Sunnī schools have allowed a loophole to exist with regard to obligating a husband to a no-fault *khulʿ* (or at least something that closely resembles a no-fault *khulʿ*).[385] The Ḥanafīs, for instance, do not require intention for *ṭalāq*, and by extension, free will is not required either. As a consequence, they state that *ṭalāq* is valid even if a third party coerces the husband into repudiating his wife, be it through striking (*ḍarb*), imprisonment (*sijn*) or by confiscating his property.[386] In other words, the wife can hire someone to compel her husband to repudiate her so as to immediately dissolve the marriage. As marriage and divorce were family affairs, this kind of practice was not uncommon. Ottoman court records, for example,

---

[383] *al-Mawsūʿah al-fiqhīyah*, XIX, 256.

[384] ʿAbd al-Rāḥmān al-Jazīrī and Muḥammad Gharawī, *al-Fiqh ʿalā al-Madhāhib al-Arbaʿah wa Madhhab Ahl al-Bayt*, 5 vols. (Beirut: Dār al-Thaqalayn, 1419/1998), IV, 470. As far as I know, this is to be decided by a judge who takes into account the specific circumstances of the couple.

[385] A case in point is arbitrated divorce in Mālikī law which may or may not be considered a *khulʿ* depending on context. The Mālikīs operationalize the Qurʾanic arbitration procedure whereby the arbitrators are not only able to divorce the couple in question, but they may also assign the financial penalties or responsibilities of divorce on either party after determining the equities of the case and which party bore the largest responsibility in the breakdown of the marriage. This way of operationalizing divorce demonstrates that divorce is also a communal function rather than simply a male prerogative. I would like to thank Mohammad Fadel of the University of Toronto for notifying me of the Mālikī position on arbitrated divorce.

[386] Ibid., 362.

shows that families frequently intervened to secure better conditions for female relatives in divorce proceedings.[387] It would have been possible and not unlikely that concerned and sympathetic family members or a judge would have compelled the husband to repudiate his wife. For example, Ottoman Ḥanafīs historically went as far as allowing a wife to poison her husband in order to separate from him.[388]

Although the subject of compelling the husband is discussed in legal works in chapters on *ṭalāq*, the Ḥanafīs state that in case of a forced *ṭalāq*, the marriage is to be annulled (*faskh*).[389] In other words, the process ends up becoming a forced *faskh* instead of a *ṭalāq*, so that the wife forgoes or loses the right to her dower and all other payments the husband is normally responsible for. Although in theory they are different, they are almost identical in practice. For example, the dissolution for both is irrevocable and the wife, in addition, forgoes her rights to her dower along with all other debts owed to her before the dissolution such as payment for the suckling of her child. In fact, *khulʿ* is sometimes defined as an "elimination of the marriage contract" (*rafʿ al-ʿaqd*),[390] which resembles the definition of *faskh*. For example, the Shāfiʿī jurist and theologian Jalāl al-Dīn al-Suyūṭī (d. 1505) defines *faskh* as a "dissolution of the marriage contract's binding" (*ḥall irtibāṭ al-ʿaqd*).[391] It thus seems that there is effectively no significant difference between *faskh* and *khulʿ*. One of the foremost classical Sunnī jurists, al-Zarkashī (d. 794/1392), goes so far as to say that when *khulʿ* is mentioned, what is discussed in reality is *faskh*.[392] Among the Ḥanbalīs, the term *faskh* is actually often

---

[387] See for example Ronald C. Jennings, "Women in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri", in *Journal of the Economic and Social History of the Orient*, Vol. 18, No. 1 (Jan., 1975), 83-97.
[388] Colin Imber, "Why Should You Poison Your Husband: A Note on Liability in Ḥanafī Law in the Ottoman Period", in *Islamic Law and Society*, vol. 1, no. 2, (1994): 206-216.
[389] al-Ṭūsī, *al-Khilāf*, IV, 478.
[390] *al-Mawsūʿah al-fiqhīyah*, XIX, 238.
[391] Ibid., 236.
[392] Ibid.

used for *khul ʿ*.[393] The only notable difference between *khul ʿ* and *faskh* among the Ḥanafīs is that the husband, in theory, is obliged to maintain the wife during the waiting period in *khul ʿ*, but not in *faskh*. However, practice in Ottoman Ḥanafī courts shows that it was standard that women gave up the right to maintenance.[394] As far as I have seen, *khul ʿ* is otherwise indistinguishable from *faskh*, at least in its practical result. In this sense, it is possible to argue that this striking similarity might be at the root of the constant disagreement among jurists over the categorization of *khul ʿ*.

## 5.1.4: IMĀMĪ TRADITIONS AND OBLIGATORY *KHUL ʿ* IN IMĀMĪ LAW

There is no agreement among the Imāmīs on whether or not *khul ʿ* is consensual or obligatory. The disagreement stems from two areas. The first is that Imāmī traditions on the matter are by and large ambiguous. The second is whether or not the principle of Commanding what is Good and Forbidding what is Evil can override the default principle of a man's free will in Imāmī law.

The most important legal reference for Imāmī Traditions is *Wasāʾil al-Shīʿah* compiled by the Akhbārī jurist al-Ḥurr al-ʿĀmilī (1033/1624). The *Wasāʾil* is twenty-nine volumes, covering all areas of law, ranging from ritual purity (*ṭahārah*) to blood-money (*dīyah*). The work is an assembly of almost all the traditions pertaining to Imāmī legal codes, extracted from some of the major corpuses of Imāmī traditions such as *al-Kāfī* and *al-Tahdhīb*, as well as works from earlier generations, one hundred and eighty in all. It has come to be the most

---

[393] Ibid.

[394] Ronald C. Jennings, "Divorce in the Ottoman Sharia Court of Cyprus, 1580-1640", in *Studia Islamica*, No. 78 (1993), 157.

practical and widely used manual of ḥadīth in Imāmī law since the Safavid period. The following is a translation of the chapter of *Wasā'il* on *khulʿ*:[395]

*Chapter on the invalidity of khulʿ and the impermissibility of [granting] an [object of] exchange to the husband [in return for marital dissolution] until contempt (karāhah) is displayed by the wife:*

1) Al-Bāqir is reported to have said: "If a woman says to her husband the [following] sentence "I will not obey you" (*lā uṭīʿu laka*) in an explicit (*amran mufassaran*) or implicit fashion (*ghayr mufassarin*), it is permissible for him to take from her and he cannot take her back anymore [i.e. the divorce becomes irrevocable]."

2) Al-Ṣadūq narrated the same tradition through his chain running from Muḥammad b. Ḥumrān to Muḥammad b. Muslim. Al-Kulaynī also narrated the same traditions through his chains running from ʿAlī b. Ibrāhīm from his father and to Abī Baṣīr as well as from his chain running from Aḥmad b. Muḥammad b. 'Īsa to ʿAlī b. al-Ḥakam.

3) Samāʿah b. Mihrān said: "I said to al-Ṣādiq that it is not permissible for a man to take from a woman separated through *khulʿ* (*mukhtaliʿah*) until she utters these words in full. Imam al-Ṣādiq replied: '[that is] if she says "I will not obey God when it comes to you" (*lā uṭīʿu Allāh fīk*), it is permissible for him to take from her what he finds.'"

4) Al-Ṣādiq is reported to have said: "It is not permissible to separate from a woman through *khulʿ* until she says to her husband: "By God, I will not do anything for you and I will not obey you at all. And I will not perform the major ablution for you from my state of ritual impurity [after intercourse] (*janābah*) and I will have intercourse [with someone else] on your bed

---

(*firāshak*) and I will permit myself upon you without your permission [i.e. I will step over your authority]". Indeed, the populace (*al-nās*) [i.e. mainstream non-Shīʿīs] allow [*khulʿ*] without this [conditional utterance]. [Regardless,] if the wife says such to her husband, then it is permissible for him to take from her [in accordance with] that utterance."

5) [Al-ʿĀmilī adds]: Shaykh al-Ṣadūq narrated a similar tradition with an addition from Imam al-Ṣādiq who said: "It is an utterance from her part, that is, [one which] he should not learn [as it is improper]."

6) Al-Ṣādiq is reported to have said: "the *mukhtaliʿah* is the one who says to her husband: "Separate from me through *khulʿ* and I will give you what I took from you". [As such] it is not permissible for him to take from her anything until she says: "By God I will not do anything for you and I will not obey you at all and I will permit myself [to leave] your house without your permission [and thus not be available for intercourse]". If she acts upon this without him hearing these words from her, it is [also] permissible to take from her."

7) Samāʿah said: "I asked Imam al-Ṣādiq about the *mukhtaliʿah* and he answered: 'It is not permissible for the husband to separate from her through *khulʿ* until she says: "I will not obey you at all and I will not observe the limits of God when it comes to you and I will not perform the major ablution for you in regard to my ritual impurity [after intercourse] and I will have intercourse [with someone else] on your bed and I will bring someone into your house that you hate without letting you know about it" - and this is something that people do not say, but it is [to be] uttered by the wife herself.'"

8) Al-Ṣādiq said: "When a man agrees to separate from his wife through *khulʿ* in exchange for property, it results in a single divorce of separation, and his relationship to her is the same as that of any potential suitor (*huwa khāṭib min al-khuṭṭāb*). [In this case,] it is not permissible to

separate through *khulʿ* until she pursues it herself [without him initiating it and] without him harming her (*yuḍirru bihā*) and until she says "I will not do anything for you nor will I perform the major ablution for you and I will bring someone into your house that you hate and I will have intercourse [with someone else] on your bed and I will not observe God's bounds". If all of this comes from her, then it is acceptable (*ṭāb*) for him to take from her."[396]

9) Al-Ṣādiq said: "It is not permissible for a man to separate from this wife through *khulʿ* until she says to her husband as the peers mentioned [in regard to what the wife is supposed to say]. Al-Ṣādiq [then added]: the people [i.e. proto-Sunnīs, however] allow it without this. [Regardless], if she says that to her husband, [then] it is permissible for him to separate from her through *khulʿ* and it is permissible for her husband to take from her whatever is present."

10) Al-Ṣādiq said: "In *khulʿ*, if the wife says "I will not perform the major ablution for you [in order to purify myself from my] ritual impurity and I will not do anything for you and I will have intercourse on your bed with someone you hate. If she says this to him, then it is permissible for him to take from her."

11) Abī Baṣīr said: I asked al-Ṣādiq about the *mukhtaliʿah*? He answered: It is not permissible to separate from her through *khulʿ* until she says "I will not do anything for you and I will not obey you at all and I will have intercourse [with someone else] on your bed and I will infringe upon you[r rights] without your permission". If she says that, it [becomes] permissible to separate from her through *khulʿ* and it becomes permissible for him to take from her dower or more; and this is [in accordance with] the word of God: "There is no harm on them in what she may give to him". If he does this, then she separates from him and she owns herself [again].

---

[396] I would like to thank Dr. Mohammad Fadel for his help in translating this tradition.

[However], if she wants, she [is free] to marry him or not [as she wishes]. If she does decide to marry him again], then it will be considered her second [marriage with the same person].

This is the only relevant chapter in the Book of *Khulʿ* and *Mubārāt* in *Wasāʾil* that might give us an indication as to whether or not *khulʿ* is consensual or obligatory.[397] The above traditions serve two major functions in Imāmī law. First, it is to establish the permissibility of *khulʿ* as a practice that is inherent to Islam as a response to the soteriological problem of marital sin. It highlights a condition through which a dissatisfied wife (regardless of the cause) fears that she may disobey God and thus sin by denying her husband sexually, or be willing to commit zinā to either protest her dissatisfaction with her husband and marriage. The second purpose of this bulk of traditions is to establish the invalidity of a *khulʿ* divorce that is forced by the husband.

What is telling of these traditions is that none of them state that *khulʿ* is obligatory upon the husband or the opposite. Just because the basis of *khulʿ* is established as permissible does not mean that it is non-obligatory. Many traditions in Imāmī source-texts state the validity and invalidity of certain forms of ritual ablutions, but do not explicitly state their obligatoriness. Many obligations in Islamic law are often derived through and qualified by secondary principles, like *al-muqadimāt al-wājib* (preliminaries for obligatory acts) in some ritual acts. The preliminaries of obligatory acts are obligatory in themselves. Commanding the Good and Forbidding Evil is a qualifier of social relations. As such, the relevance and strength of the latter principle is the basis through which Imāmī jurists make divorces obligatory upon husbands.

---

[397] The other chapters are largely about rulings pertinent to *khulʿ* such as the waiting period or largely repeat versions of traditions in the first chapter.

5.1.5: MEN AS FREE AGENTS OR 'COMMANDING THE GOOD AND FORBIDDING EVIL?

Imāmī jurists are in agreement that if a husband forces his wife to sin, standard divorce (ṭalāq) can be obligatory, or at the very least, the wife can acquire the prerogative for divorce. In this no-fault state, she also receives her dowry as opposed to khulʿ. Imāmī jurists, however, do not agree if khulʿ is obligatory when the wife herself becomes susceptible to sin. One group has inclined towards making khulʿ divorce consensual rather than obligatory. This position has been based on four factors:

1) divorce or repudiation can only be established by the husband,

2) khulʿ is a contractual transaction and therefore cannot be forced on any party and

3) the husband by default cannot be obligated to do something by his wife, as he is a free agent.

4) Giving women easy access to divorce through obligatory khulʿ creates another crisis of salvation as it makes divorce easier and thereby undermines marriage as a whole.

In addition to the new problem of salvation obligatory khulʿ creates, the question of the husband's free will or, more precisely, his "exemption [as a free agent] from being compelled or obligated" (barāʾat al-dhimmah ʿan al-wujūb) by his wife is the most oft cited reason why khulʿ cannot be made obligatory.

I suspect the third and fourths points had taken precedence over the first two for the following reasons:

1) The tradition on the husband's exclusive right to ṭalāq is a non-Imāmī one (proto-Sunnī) (and thus potentially suspect for Imāmīs). Moreover, historically speaking, it did

not concern power relations between man and woman or husband and wife, but husbands and slave masters or guardians. The tradition was about a man who had complained to the Prophet that his wife's slave-master was trying to force him to dissolve his marriage (as the slave-master was now coveting her) after he had allowed him to marry her initially. To this, the Prophet replied: "*Ṭalāq* is in the hands of he who took the [wife's] leg"; in other words, *ṭalāq* cannot be initiated by the slave-master but only by the husband who consummated the marriage.

2) The argument that *khulʿ* is a contract or transaction, thus necessitating an initiation (*ījāb*) by the wife and acceptance (*qabūl*) by the husband, might have been problematic because Imāmī jurists have only regarded it as a symbolic transaction and not a real one.[398]

3) This leaves the idea that a man cannot, as a naturally free agent, be compelled to divorce by his wife if she is at fault. He cannot be forced into a divorce of any kind as long as he meets his basic responsibilities as a husband, namely being morally decent (e.g. not abusing her, sinning, or forcing her to sin etc.) and meeting his obligations of *nafaqah*. As long as he is not at clear fault, he cannot be forced into a standard divorce or *khulʿ*.

4) Opening this doorway for women can create pretexts to subverting the endurance of marriage and thereby creating new doorways to zina that marriage was supposed to close in the first place.

---

[398] Subḥānī, *Niẓām al-Ṭalāq*, 368.

All divorce that is compelled in response to sin is done so through the principle of Commanding the Good and Forbidding Evil. The Imāmī jurists who advocated obligatory *khulʿ* in the event of probable sin from the wife's side were of no exception.

For these jurists, the wife's contempt or *karāhah* put her ability to observe God's bounds in question if she remained in her marriage. The probability of becoming a *nāshizah* or even worse, a *zānīyah*, was a risk not worth taking for these jurists. Islam, as a pietistic practice, was meant to be a program for the cultivation of the self and not a grounds for sin. As seen earlier, marriage was seen as a garment that one wore, and hence *becoming part of the self*. As the wife was part of the marriage, she was also part of the self. Even though *khulʿ* was a dynamic between two subjects, it could, in this context, be a practice of mutual self-formation. On this basis, it became obligatory for the husband to *Forbid Evil* by divorcing his wife through *khulʿ* and to prevent her from actual sexual disobedience (*nushūz*) or zinā.

In the extant legal literature, the earliest jurist to have explicitly dealt with the question of obligatory *khulʿ* was Shaykh al-Ṭūsī. In a famous passage, al-Ṭūsī writes that:

> *Khulʿ* is obligatory if the woman says to her husband: "I will not obey you at all and I will not stand up for you at all and I will not perform the major ablution for you from my state of ritual impurity and I will have sexual intercourse on your bed with someone you hate if you do not divorce me". When he hears these words from her, or he comes to know[399] this through her state of rebelliousness in regard to something like that, even if she does not say it [explicitly to him,] it is obligatory upon him to separate from her through *khulʿ* (*wajaba ʿalayh khalʿaha*).[400]

Jurists who opposed al-Ṭūsī's ruling on obligation argued that what he really meant by "obligatory" was in fact an "intense recommendation" (*shadīd al-istiḥbāb*). Commenting on al-Ṭūsī's passage, Muḥammad b. Idrīs al-Ḥillī (d. 598/1202), for example, emphasized that it was

---

[399] See fn. 411 on the al-Ṭūsī's usage of *ʿalima* (to know, to come to know) as a marker of probability and not certainty.

[400] Al-Ṭūsī, *al-Nihāyah fī Mujarrad al-Fiqh wa-al-Fatāwa* (Beirut: Dār al-Kitāb al-ʿArabī, 1400/1979), 529.

only an emphasis in recommendation (*taʾkīd al-istiḥbāb*) without necessity and obligation. In sum, it was only an "intense recommendation," and al-Ṭūsī's words, according to the author, were "out of place" (*fī ghayr mawḍiʿ*) for having alluded or giving the impression otherwise.[401] The reasoning behind his objection to a literal understanding of al-Ṭūsī is that a husband is by default "free" (*mukhayyar*) in separating from the wife through *khulʿ* or in divorcing her. Ultimately, divorce is "in his hands" (*al-ṭalāq bi-yadihi*) and "no one can force him to such" (*lā aḥad yajburuhu ʿalā dhālik*).[402] ʿAllāmah al-Ḥillī also agrees with Ibn Idrīs on both levels. First, he states that a man by principle (*aṣl*) cannot be forced into *khulʿ*, as he is exempt from obligation in this regards (*barāʾat al-dhimmah min wujūb al- khulʿ*).[403] Secondly, he comments on al-Ṭūsī's passage that what is "apparent (*ẓāhir*) is that the intention (*murād*) of the Shaykh in regard to that is the "intensity of the recommendation" (*shiddat al-istiḥbāb*)".[404] But these assumptions about the non-literalness of al-Ṭūsī's claims have been seriously doubted by most of the Imāmī tradition.

As al-Shahīd al-Thānī remarks,[405] al-Ṭūsī's comments were already controversial and unsettled from the beginning. ʿAllāmah al-Ḥillī himself is unsure of al-Ṭūsī comments, as indicated by his use of the term 'seeming' (*ẓāhir*), which in Imāmī law is often an indicator of uncertainty.[406] Other jurists, such as Muḥaqqiq al-Ḥillī (d. 1277) stated that al-Ṭūsī's position was an actual obligation[407] and not a recommendation, a view that appears to be held by al-

---

[401] Ibn Idrīs al-Ḥillī, *al-Sarāʾir*, II, 764.

[402] Ibid., 765.

[403] Ḥasan b. Yūsuf b. Muṭṭahar al-Ḥillī, *Mukhtalaf al-Shīʿah,* VII, 383.

[404] Ibid.

[405] Zayn al-Dīn b. ʿAlī al-ʿĀmilī, *Masālik al-Ifhām*, IX, 411; Muḥaqqiq al-Sabzawārī (d. 1679) also remarks that al-Ṭūsī's position is unclear (*ghayr wāḍiḥ*); see Muḥammad Bāqir b. Muḥammad Muʾmin al-Sabzawārī, *Kifāyat al-Aḥkām*, 2 vols. (Iṣfahān: Markaz-i Nashr-i Iṣfahān, n.d), II, 383.

[406] The term is sometimes used to express confidence, but in this context it is an indicator of uncertainty.

[407] Muḥaqqiq al-Ḥillī, *Sharāʾi al-Islām*, III, 40; other jurists have also understood al-Ṭūsī in a similar way; see for example al-Fayḍ al-Kāshānī, *Mafātīḥ al-Sharāʿi*, II , 322; ʿAlī b. Muḥammad b. Abī Muʾādh al-Ṭabaṭabāʾī, *Rīyāḍ al-Masāʾil*, XII, 361.

Irawānī's *al-Fiqh al-Istidlālī*,[408] currently one of the standard introductory law texts in Imāmī

seminaries. Despite some doubters, most jurists seem to be of the opinion that al-Ṭūsī's

statement was an actual obligation. I would myself agree that it is unlikely that al-Ṭūsī was

referring to a recommendation instead of an actual obligation. This is due to the fact that in

Imāmī law, such indistinct and illusive language is often restricted to works of ethics, whereas

in law, concepts and verdicts are clear and direct, given the sensitivity of the enterprise. There

is also the nature of al-Ṭūsī's work which this passage is cited in and the fact that they are an

outline of his final binding verdicts (*fatāwā*) and not intellectual musings as evident in the title

of the work that the statement is found in.

Despite the acceptance of the literal sense of al-Ṭūsī's comments, many Imāmī jurists,

both classical and modern, have implicitly or explicitly rejected obligatory *khulʿ*, at least in so

far as making it obligatory on the basis of *probability* is involved.[409] I say probability as the

ambivalence does not seem to only come from the problem of subverting the husband's will

---

[408] Bāqir al-Irawānī, *Durūs Tamhīdīyah fī al-Fiqh al-Istidlālī ʿalá al-Madhhab al-Jaʿfarīyah,* 3 vols. (Qum: Muʾassasat al-Fiqh, 1426/2005*)*, II, 435.

[409] See for example Mufliḥ b. al-Ḥasan Rashīd al-Ṣaymarī, *Ghāyat al-Marām fī Sharḥ Sharāʿi al-Islām*, 4 vols., ed. Jaʿfar al- Kawtharānī al-ʿĀmilī (Beirut: Dār al-Hādī, 1420/1999), III, 266; Bahāʾ al-Din Muḥammad b. Tāj al-Dīn Ḥasan al- Iṣfahānī, *Kashf al-Lithām wa al-Ibhām ʿan Qawāʿid al-Aḥkām*, 11 vols., ed. Gurūh-i Pazhūhish-i Daftar-i Intishārāt- i Islāmī (Qum: Daftar-i Intishārāt-i Islāmī, 1416/1995), VIII, 187; Najm al-Dīn b. Jaʿfar b. Ḥasan al-Ḥillī (Muḥaqqiq al-Ḥillī); *Sharāʿi al-Islām fī Masāʾil al-Ḥalāl wa al-Ḥarām*, 4 vols., ed. ʿAbd al-Ḥusayn ʿAlī Baqqāl (Qum: Muʾassasah-yi Ismāʾīlīyān, 1408/1987), III, 40; Zayn al-Dīn b. ʿAlī al-ʿĀmilī, *Masālik al-Ifhām ilá Tanqīḥ Sharāʿi al-Islām*, 15 vols., ed. Gurūh-i Pazhūhish-i Muʾassasah-yi Maʿārif-i Islāmī (Qum: Muʾassasat al-Maʿārif al- Islāmīyah, 1413/1992), IX, 411; Faḍil al-Miqdād, *Kanz al-ʿIrfān fī Fiqh al-Qurʾān*, 2 vols. (Qum: np, nd), II, 285; Muḥammad Muḥsin b. Shāh al-Fayḍ al-Kāshānī, *Mafātīḥ al-Sharāʿi*, 3 vols. (np, nd), II, 322; al-Baḥrānī, *Ḥadāʾiq al-Nāḍirah*, V, 555; Sayyid ʿAlī b. Muḥammad b. Abī Muʿādh al-Ṭabaṭabāʾī, *Riyāḍ al-Masāʾil fī Taḥqīq al-Aḥkām bi al-Dalāʾil*, 16 vols., ed. Muḥammad Bahrimand, Muḥsin Qadīrī and Karīm Anṣārī (Qum: Muʾassasat Āl al-Bayt, 1418/1997), XII, 361 also in his *al-Sharḥ al-Ṣaghīr fī Sharḥ Mukhtaṣar al-Nāfiʿ*, 3 vols., ed. Sayyid Mahdī Rajāʾī (Qum: Intishārāt-i Āyat Āllāh Marʿashī Najafī, 1409/1988), II, 455. For an example of a modern scholar who rejects obligatory *khulʿ*, see Sayyid Aḥmad Khwānsārī, *Jāmiʿ al- Madārik fī Sharḥ Mukhtaṣar al-Nāfiʿ*, 7 vols., ed. ʿAlī Akbar Ghaffārī (Qum: Muʾassasah-yi Ismāʾīlīyān, 1405/1984), IV, 589. Some have also added another barrier by stating that *khulʿ* can only be established by initiation and subsequent acceptance (*bi-ijābihi wa qabūlihi*), see al-Najafī, XXXIII, 47. A few jurists have even gone so far as to say that even with *karāhah*, the source-texts indicate that dissolution of the marriage is not even recommended, but only subject to "permissibility" (*ḥillīyah/ibāḥah*), Ibid., 45; Aḥmad Khwānsārī, *Jāmiʿ al- Madārik fī Sharḥ Mukhtaṣar al-Nāfiʿ*, 7 vols., ed. ʿAlī Akbar Ghaffārī (Qum: Muʾassasah-yi Ismāʾīlīyān, 1405/1984), IV, 589.

when he is not at fault, but to the degree of confidence that sin would occur. When there is

relative confidence and certainty that the wife would actually sin (such as her making an oath),

making *khulʿ* obligatory seems to be less of a problem and most of the Imāmī jurists concur to

its obligation. Al-Shahīd al-Thānī, for example, outlines the ambivalence of whether or not

divorce is recommended or obligatory when there is a likelihood of sin. Although he initially

inclines to making it recommended and hence non-obligatory, the degree of sin and the higher

probability of sin actually occurring can lead to making the divorce obligatory. At this level of

fearing sin, al-Shahīd al-Thānī likens the situation to an unmarried person's real fear of zinā or

illicit sexual behavior in which case he or she would be obligated to marry.[410] It is noteworthy

here that the obligation to marry - when confronted with real fear of sin - is normative in the

Imāmī tradition. This ruling is also based on the principle of Commanding the Good and

Forbidding Evil. Just like marriage is a technology of the pious self, *khulʿ* divorce becomes a

safety mechanism to preserve the pious self when marriage does not meet its telos of self-

virtuous self-formation.

The uncertainty of the jurists who doubt obligatory *khulʿ* not only demonstrates the

difficulty the jurists have in establishing the consensual nature of *khulʿ*, but also indicates their

moral misgivings. On the basis of the probability[411] that the wife *may* commit a sin, should one

subvert the free will of the husband or not? The question of obligatory *khulʿ* becomes not just

an issue of saving a wife from sin, but also a question of how far a jurist can go on the basis of

probability whilst not risking his own salvation by stripping a man of his free will and more

---

[410] Qudrat Allāh Wijdānī-Fakhr, *Al-Jawāhir al-Fakhrīyah fī Sharḥ al-Rawḍah al-Bahīyah*, 16 vols. (Qum: Intishārāt-i Samāʾ-i Qalam, 1426/2005), XIII, 46.

[411] Although al-Ṭūsī uses the word *ʿalima* as in "to know" in his passage on obligatory *khulʿ*, the term is indicative of probability and not certainty. The word *ʿalima* is a commonly used to indicate possibility in Imāmī law and not necessarily in reference to certainty.

importantly, increasing the likelihood of divorces in the community and thus undermining the framework of marriage.

Like Jewish jurists and the horror they expressed at Maimonides' granting women the unilateral right to divorce[412] - a divorce which was strikingly similar to *khulʿ* - the fear of making divorce in the community even easier by giving women the right to force it through was of serious concern. The fear was that women could use *karāhah* and the threat of *nushūz* as a pretext for no-fault divorces and thus undermine the soteriological practice of marriage. Although male *ṭalāq* is unrestricted for men, Imāmī law does not distinguish between male and female initiated divorces when it comes to its disdain of the practice unless it is genuinely

---

[412]The issue of compelling husbands to divorce presented a moral dilemma to Jewish scholars as well. For example, Maimonides allowed a *moredet* to receive an obligatory divorce, a process akin to obligatory *khulʿ* in Islamic law. A *moredet* in Jewish law is a "rebellious wife" who "knowingly" violates the laws of the Torah or "conventional morality," akin to a zānīyah in Islamic law. Included in this definition of a *moredet* is a wife who willingly refuses to have sexual relations with her husband, akin to a *nāshizah*. Maimonides argued that if a wife was considered a *moredet* due to her refusal of sexual intercourse with her husband, the beth din had the right to compel the husband to divorce her. Maimonides thus said, "A woman who denies her husband sexual intercourse is called rebellious [*moredet*]. They ask her why she has rebelled. If she says: "I despise him and I cannot bring myself to be possessed [sexually] by him," they compel him to divorce her. For she is not a captive that she should be possessed by one who is hateful to her. And she goes out with any ketubah payment at all." See Maimonides, Mishneh Torah, Hilkhot Ishut 14:8, translated and quoted from Rachel Biale, *Women and Jewish Law* (New York: Schocken Books, 1995), 91. Maimonides' ruling, however, was rejected by the mainstream Rabbis, Ashkenazi and Sephardi alike, due to the perceived danger it presented to marriage and communal integrity. On the Ashkenazi side, Meir of Rothenburg (d. 1293), the central rabbinic authority of the thirteenth century, followed the verdict of Rabbi Jacob ben Meir (d. 1171, better known as Rabbenu Tam) in rejecting the idea that the beth din could enforce the get (divorce document) of a *moredet*, see Samuel Morrell. "An Equal or a Ward: How Independent Is a Married Woman according to Rabbinic Law?" in *Jewish Social Studies*, vol. 44, #3/4 (Summer-Autumn 1982), 201. Rabbenu Tam's opinion seems to have had the effect of ruling out the possibility that a husband could be compelled to divorce a rebellious wife; though the husband could still be forced if the affair fell under one of the already-established Talmudic categories of mandated dissolution. Rabbenu Tam appears to have been worried that Maimonides' view would afford women easy exit from "unwanted" marriages, if they were to meet other men whom they wanted, see Biale, 91. Rabbenu Tam's opinion was finally so influential that it led Shlomo Riskin to remark that he "single- handedly changed the course of the halakhic attitude", see John D. Rayner. "From Unilateralism to Reciprocity: A Short History of Jewish Divorce", in *Journal of Progressive Judaism*, no. 11 (November 1998), 53. Rabbenu Tam's ruling in the twelfth century C.E became the accepted point of view for later generations. Even on the Sephardic side, Shlomo Ben Aderet (d. 1310) also rejected Maimonides' ruling. One of Ben Aderet's contemporaries went so far as to declare: "It is impossible to say that we compel the husband to divorce her. For if so, there wouldn't be a son of Abraham alive whose wife would stay with him! Whenever she would be angry with him, she would rebel and say, ʾI can't stand him' [or ʾI despise him']." See Samuel Morrell. "An Equal or a Ward: How Independent Is a Married Woman according to Rabbinic Law?" in *Jewish Social Studies* 44 no. 3/4 (Summer-Autumn 1982), 201.

necessary on moral grounds. Ubiquitous in Imāmī source-texts are traditions that subjects

serial divorcers to the hate and curse of God. Al-Bāqir for example is reported to have stated:

> Indeed, God (Mighty and Majestic is He!) hates the serial divorcing tasters
> (*miṭlāqin dhawwāqin*) [from among the men.][413]

The usage of the word "tasters" (*dhawwāqin*) is in reference to people who treat marriage like

the sampling of foods where a man impatiently and hastily moves from tasting one dish to

another. The attitude is condemned as permanent marriage is not a matter of instant

gratification, but a practice that is to be characterized by great patience, as in the traditions that

state that one should forgive one's spouse "seventy-times a day." Marriage, in the juristic

imagination, is thus a battle that the individual battles against his or her carnal self and

overcomes arrogance by cultivating compassion and altruism. It is a means for developing

interior patience (*ṣabr*) and the growth of *īmān* and hence part of the larger Islamic project of

pious self-formation. Hasty divorces counteract the above telos. Imāmī traditions further

elucidate why divorce is morally and soteriologically problematic. In one tradition attributed to

the Prophet, it is said that

> It is of the share of good fortune of a Muslim that females from a family marry
> early on. There is nothing which God (Mighty and Majestic is He!) loves more
> than a house which erects itself on marriage and there is nothing which God
> hates more than a house which destroys itself in Islam through separation that
> is, divorce. Al-Ṣādiq (peace be upon him) said: Allah (Mighty and Majestic is
> He!) stressed on God's hating of divorce in repeated ways because of His
> intense hatred of separation.[414]

In another tradition attributed to the Prophet, he said that: "Marry and do not divorce, for

surely from divorce, the Throne (ʿarsh) [of God] is shaken."[415] Condemnation of divorce in

---

[413]  Al-Kulaynī, XI, 465.

[414] Ibid, X, 581.

[415] Al-Ṭabarsī, *Majmaʿ al-Bayān*, X, 457; *Makārim al-Akhlāq*, 197; also quoted in Ḥurr al-ʿĀmilī, *Wasāʾil al-Shīʿah*, XXII, 9. The tradition has also been narrated by al-Ṭabarānī through Sunnī sources, where the repudiator is warned against "shaking the throne of the All-Merciful" (ʿarsh al-Raḥmān).

Imāmī *ḥadīth*s are made vivid and personal by portrayals of the Prophet and the Imāms angrily reproaching particular men who were serial divorcers. In one instance, a tradition relates that the Prophet was approached by a man who had married and repudiated two women one after the other, although neither had committed any evil (*sū'*) (i.e. sexual sin and impropriety). Upon hearing this, the Prophet replied to the man that "God hates (*yubghiḍ*) and curses (*yalʿan*) all tasters from among men and all tasters from among women."[416]

Divorce is therefore not simply a personal problem, but a fundamentally soteriological one as the two first traditions suggest. If jurists had misgivings about obligatory *khulʿ*, it is because it also created another problem of salvation by making the event of divorce more probable in the community. For Imāmī jurists and the source-texts, when a couple separates, the primary victim, is "Islam," or the "Throne of God," in other words, the salvific integrity of the community for it stands as the anti-thesis to the teleology of marriage and hence why it is hated and cursed by God. Probable sin was therefore not justification enough to strip a man of his free will, especially when it created another soteriological problem of making divorce easier than it already was. For many of the doubters of obligatory *khulʿ*, nothing short of certainty was enough reason to justify it.

For al-Ṭūsī, the dangers presented by dissatisfied and restless wives was greater than the risk of easier divorces. Easier divorces were a more distant problem as opposed to the immediate problem of a woman possibly sinning because she was unhappy in her marriage. Al-Ṭūsī's successors make it clear that he was relying on the principle of Commanding the Good and Forbidding Evil.[417] The usage of this principle leaves little doubt that the problem of obligatory *khulʿ* was not a simple legal deduction from source-texts as the texts are by

---

[416] Al-Kulaynī, XI, 465; Ḥurr al-ʿĀmilī, *Wasā'il al-Shīʿah*, XXII, 8.
[417] ʿAllāmah al-Ḥillī, *Mukhtalaf al-Shīʿah*, VII, 383.

themselves not explicit on obligation. Al-Ṭūsī's main concern was salvific. Al-Ṭūsī knew that marriage or *khulʿ* were not real transactions. He knew that marriage was at its core level a mechanism to help the salvation of his community and a means for the cultivation of the pious self. Marriage would therefore defeat its own initial purpose if it would allow itself to be turned into a mechanism that assisted in sinning, leading one to damnation and subverting the piety and virtue of a believing Shīʿī woman. The usage of *nahī ʿan al-munkar* in making divorce obligatory demonstrates that some Imāmī jurists had to settle with what they saw as the lesser of two evils where a man's free will needed to be subverted, and if need be, make some divorces more likely, in order to save the community from *nushūz* and zinā which were more immediate and more dangerous problems.

Among the major classical Imāmī jurists, five besides al-Ṭūsī, as far as I have been able to establish, are known to have deemed *khulʿ* obligatory, all under the rubric of Forbidding what is Evil. The five are:

1) Abū Ṣalāh Taqī al-Dīn b. Najm al-Dīn al-Ḥalabī (d.1055)[418]

2) Qāḍī Ibn al-Barrāj (d. 1088)[419]

3) ʿImād al-Dīn Muḥammad b. ʿAlī b. Ḥamzah al-Mashhadī (d.1170)[420]

4) Quṭb al-Dīn Saʿīd b. ʿAbd Āllāh al-Rāwandī (d. 1177)[421]

5) Sayyid ʿIzz al-Dīn Ḥamzah b. ʿAlī Ibn Zuhrah al-Ḥalabī (d.1189)[422]

---

[418] Abū Ṣalāh Taqī al-Dīn b. Najm al-Dīn al-Ḥalabī, *al-Kāfī fī al-Fiqh*, ed. Riḍā Ustādī (Iṣfahān: np, 1403/1982), 307.

[419] Ibid. Al-Ḥillī quotes his opinion from one of his non-extant works (al-Kāmil). His extant works, however, do not discuss obligatory *khulʿ*.

[420] ʿImād al-Dīn Muḥammad b. ʿAlī b. Ḥamzah al-Mashhadī, *Wasīlah ilā Nayl al-Faḍīlah*, ed. Muḥammad Ḥassūn (Qum: Maktabat Āyat Āllāh al-Marʿashī al-Najafī, 1408/1987), 331.

[421] Quṭb al-Dīn Saʿīd b. ʿAbd Allāh al-Rāwandī, *Fiqh al-Qurʾān*, 2 vols. (Qum: Maktabat Āyat Āllāh al-Marʿashī al-Najafī, 1405/1984), II, 194.

[422] Sayyid ʿIzz al-Dīn Ḥamzah b. ʿAlī Ibn Zuhrah al-Ḥalabī, *Ghunyat al-Nuzūʿ ilā ʿIlmay al-Uṣūl wa-al-Furūʿ*, (Qum: Muʾassasah-yi Imām-i Ṣādiq, 1417/1996), 374-375.

The usage of Commanding the Good and Forbidding Evil illustrates that often enough, when dangers of salvation were real enough, Imāmī jurists were less interested in getting their legal inferences right than attempting to solve a soteriological crisis of their communities. It is therefore a phenomenon which Lawrence Rosen sees as the result- oriented reality of Islamic law.[423] In this context, the result was to safeguard the metaphysical heart from sins and sexual vices as much as possible. The fear was not always unfounded in some Shīʿī communities. Willem Floor, for example, notes that adultery was not a rare occurrence amongst (Shīʿī) women in nineteenth century Iran. Despite the high risk of honor killings, many women were dissatisfied with their marital and sexual lives, as it often happened that their husbands were either significantly older than them or practiced polygamy and same-sex contact and were thus sexually inattentive.[424]According to one observer of nineteenth century Shīʿī society in Iran, if "sodomy be the common vice of the men, adultery is said to be the special vice of the women, by which they retaliate."[425] It is true that the jurists lived in social and temporal contexts that were different from those in nineteenth Iran, but the overwhelming concern for zinā in the legal texts shows that adultery was not irrelevant to their social milieu, but a potentially subversive force that had to be reckoned with.

---

[423] See Lawrence Rosen, *The Anthropology of Justice: Law as a Culture in Islamic Society* (Cambridge: Cambridge University Press, 1989).
[424] Floor, A Social History, 97-109.
[425] Ibid., 103.

## 5.2: YŪSUF ṢĀNIʿĪ AND OBLIGATORY *KHULʿ*

The only contemporary Imāmī jurist to have a full, single volume dedicated treatise on

obligatory *khulʿ* is Yūsuf Ṣāniʿī (b. 1937).[426] What breaks Ṣāniʿī from the historical line of

---

[426] Yūsuf Ṣāniʿī was born in the city of Nīkābād, Isfahan in 1937. His grandfather, Ḥajj Mullā Yūsuf (d. ?) had been a close ally of Mirzā Muḥammad Ḥasan Shīrāzī's (d. 1896) 1891 anti-colonial Iranian Tobacco Movement. His father Muḥammad ʿAlī Ṣāniʿī (n.d) seems to have been a lower ranking cleric compared to Yūsuf Ṣāniʿī himself and his grandfather, as the title ʿḤujjat al-Islām' suggests as opposed to the title Ayatullah that is usually given to Ṣāniʿī by his followers. He entered the Shīʿī Seminary of Nīkābād in 1946 and later moved to Qum for more advanced studies (*baḥth al-khārij*) in 1951 in which he became a student of the highest ranking Imāmī jurist and sole *marjaʿ* of his time, Ḥusayn Burūjirdī (d. 1961). His entrance to Qum coincided with the rise of Muḥammad Muṣaddiq (d. 1967) as Prime Minister of Iran, which led to the nationalization of Iran's oil industry. In this time of upheaval, Ṣāniʿī witnessed Muḥammad-Reza Shaah Pahlavi (d. 1980) fleeing Iran and his subsequent return under the British and CIA-orchestrated coup against Muṣaddiq in 1953, which reinstated British monopoly over Iranian oil. Nearly two years after witnessing the coup, Ṣāniʿī became a student of Khumaynī for eight years. This lasted until Khumaynī was exiled to Iraq in 1963 after publically criticizing the Shah for instituting the White-Revolution. The White Revolution was a program which, according to its advocates, was meant to modernize Iran and take it forward economically. Its critics believed that it was a program insisted by the West, and particularly by the United States, in order to colonize Iran culturally and make it subservient to a Western global-colonial market.[426] The latter was the view that Ṣāniʿī would almost certainly have subscribed to. Ṣāniʿī is said by his office to have been the ʿtop student' of Khumaynī and displays a sign in his office wall featuring the following words from Khumaynī: "I raised Ayatullah Ṣāniʿī like a son." Publicizing such credentials are not unusual among Imāmī jurists as they are means for establishing communal recognition by the next generation of jurists. It is likely that highlighting Ṣāniʿī's association with Khumaynī also serves to protect him from his critics amongst the more conservative jurists who often attack him for his more liberal legal opinions and his association with the Republic's subversive Green Movement. Ṣāniʿī's office adds that at the incredible young age of twenty-two, he received his degree in ijtihād, a rare degree which one attains after mastering Islamic legal knowledge which allows holders to deduce their own laws. By 1975 at the age of thirty-eight, Ṣāniʿī began teaching his own *khārij* classes. After the 1979 Islamic Revolution, Ṣāniʿī joined the twelve-member Guardian Council (*Shūrā-yi Nigahbān*), the most powerful institutional body in Iran after the office of the Guardian Jurist (*Walī al-Faqīh*), which was first held by Khumaynī and then ʿAlī Khāmeneʾī. This placed Ṣāniʿī in the midst of Islamic Iran's legislative system, and he personally oversaw the bills and new laws that were passed in parliament. In this influential post, he was also, in the early 80s, an important member of the council drafting the constitution. Later on, Ṣāniʿī was appointed as Chief Prosecutor of Iran's Judiciary system, which gave him firsthand experience with procedural and substantive law in a modern Islamic state. In sum, Ṣāniʿī played an important role in Iran's transition from a secular to a religious state, and this allowed him to experience the challenges and assess the advantages and disadvantages of incorporating Islamic law into a modern state. By 1984, Ṣāniʿī resigned from his position and withdrew from the government altogether. He was subsequently replaced by Ayatullah Miṣbāḥ-i Yazdī, the de-facto leader of Iran's conservative camp. After retiring from his post, Ṣāniʿī moved to Qum to carry out research and rethink some of the more mainstream legal opinions that had challenged him in his previous government position. These challenges largely pertained to gender and the rights of religious minorities, as well as issues relevant to Iran's new youth such as the permissibility of music. In Qum, Ṣāniʿī produced new works attempting to reconcile notions of women and minority rights in Islamic law with modernist notions of gender and religious equality. The revolution was a main catalyst for women joining the work force. As gender conditions changed on the ground, Ṣāniʿī began expressing himself more explicitly on notions of gender equality. Ṣāniʿī, for example, once remarked: "[s]oon women will be in charge of most important decision-making positions. We cannot insist that the past laws are universal and for all periods of time." For Ṣāniʿī, women educated in modern institutions and "modern understandings of gender equity" would be less likely to settle for restrictive religious laws and would want more or less the same freedoms and rights in family and work life as men. This discursive shift pushed Ṣāniʿī to issue non-mainstream opinions

legal discourse is his introduction of modernist notions of gender equality as a new sphere of discursive power in Islamic law. It is not that salvation no longer plays a role in Ṣāniʿī's thought, but it is his perception that existing laws in the Imāmī tradition can be incompatible with gender equality may dishearten many drive some men and women away from Islam, either by cornering them into sin (e.g. women not being able to leave marriages) or distancing themselves from Islamic law or Islam itself because they see it as an unfair and oppressive religious institution. How can Islam act a program for the cultivation of the virtuous self if people do not subscribe to the tradition in the first place? For Ṣāniʿī, divorce is a prime example of what is wrong with juristic law and gender relations.

Ṣāniʿī's work on *khulʿ* is an extension of Khumaynī's first proposal in which he sought to standardize this form of divorce through implementing a binding fatwa for his followers. In response to a letter from a woman who was seeking to dissolve her marriage from her husband due to certain hardships she was facing, Khumaynī replied:

> Caution demands that first, the husband must be persuaded, or even
> compelled, to divorce; if he does not, [then] with the permission of the judge,
> divorce is effected; [but] there is a simpler way, [and] if I had the courage [I
> would have said it].[427]

Although Khumaynī never made the 'simpler way' explicit, most likely due to his fear of his peers who like al-Ṭūsī's critics, were vehemently against the idea of making *khulʿ* obligatory on the basis of general discontent and probable sin. Ṣāniʿī explains that what Khumaynī meant by this statement is the following: if the husband refused to divorce his wife, the refusal itself

---

such as equal blood-money (*dīyah*) for men and women as well as Muslims and religious minorities, and equal value of the court testimony (*shahādah*) for men and women,[426] Muslims and non-Muslims alike. Ṣāniʿī also allowed women to hold positions that were previously the prerogative of men, such as judgeship, Friday prayer leader and *marjaʿ*. Ṣāniʿī also allowed women to initiate unilateral divorces within the context of *khulʿ*.
[427] Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (New Jersey: Princeton University Press, 1999), 164-165.

would be proof of hardship (*ḥaraj*),[428] which is related to the concept of "no-harm in Islam" (*lā ḍarar fī al-Islām*) thus indicating that Khumaynī's view was encompassing of both sin as a possibility and a certainty. The wife would have the option of unilateral marital dissolution, either through *khulʿ*[429] or *faskh*. As such, Khumaynī was concerned with the "mental hardships" women could go through and how such a state could possibly lead to sin or spiritual despair, the anti-thesis of a sound *qalb* and Islam as a program for self-cultivation. Ṣāniʿī thus sees himself as following Khumaynī in making a case for obligatory *khulʿ* and working out his own version of the argument in detail.

## 5.2.1: ṢĀNIʿĪ'S LEGAL METHOD

Despite Yūsuf Ṣāniʿī's concerns for equality, he has been careful to frame his arguments within Imāmī law's legal terminology (at least to some extent) in an attempt to preserve the legitimacy of his views and gain wider-acceptance within Iran as well as among his peers. His legal method, according to his own writings, is characterized by four features:

1) Use of the Qurʾan as an ethical paradigm in criticizing and shaping our understanding of Prophetic traditions, as well as a paradigm for an overall construction of an ethical law. This is opposed to a law derived largely through strict deduction only. In Ṣāniʿī's view, Qurʾānic ethics must function as the *ratio legis* when constructing the law in order to maximize divine justice (*ʿadālah*) in the Sharīʿah. Ṣānīʿī therefore sets himself

---

[428] Ibid.

[429] Mir-Hosseini does not explicitly state *khulʿ* in her book, but says that she can "divorce herself" where the husband "loses the right to divorce and the wife acquires it". However, her exposition of Ṣāniʿī's view needs more qualification because it alludes to a delegated repudiation, which is not what Ṣāniʿī means. After having contacted Ṣāniʿī's office myself, they confirmed that what was meant by this statement was *khulʿ*.

the task of assuming that there is an objective meaning to the Qurʾan's verses which his peers and predecessors have mostly missed. For Ṣāniʿī, the underlying implications of these verses are more in line with specific modernist notions of gender equality rather than what he sees as the patriarchy espoused by his peers. He therefore constructs a new Qurʾan-based ethical paradigm as the new *ratio legis* of Imāmī law. Despite the anachronism involved in making the Qurʾan a spokesperson for *some* aspects of modern equal-rights discourse, Ṣāniʿī feels confident that this discursive tension is non-problematic.

2) Use of reason (*ʿaql*). For Ṣāniʿī, the usage of "reason" refers to the use of deductive reasoning in deriving rulings. It also refers to the determination of objective moral principles that must be a basis for deriving legal verdicts. Although this kind of *ʿaql* is traditionally a source of law in Imāmī jurisprudence,[430] its use has become rare within Imāmī circles due to (in Ṣāniʿī's view) reliance on precaution (*iḥtīyāt*) in regards to how far reason can derive moral truths. Ṣāniʿī is critical of this cautious stance as he believes it has caused Imāmī law to stagnate morally in the face of an equal-rights modernist project which for him, largely represents a universal standard for morality and hence law.

3) Rigorous *isnād* criticism. Criticizing the chains of transmission has been one important tool that Ṣāniʿī has used in order to refute the views of his detractors. Ṣāniʿī believes that much of the problematic traditions that exist in Shīʿī sources are originally from non-Imāmī sources, particularly proto-Sunnī and Sunnī ones. Restrictive and non-egalitarian views are inspired by these sources. True Shīʿī morality in his view, has

---

[430] See my discussion of *ʿaql* in chapter one.

more in common Western liberal modernity when Sunnī-inspired traditions are taken out of the equation.

4) Reference to classical jurists for controversial opinions. Novel opinions are generally unwelcome in modern conservative circles, as they are seen as being the product of "outside secular" influences. Ṣāniʿī attempts to portray himself as the most faithful jurist to the historical Imāmī Shīʿī tradition whilst advocating legal reform.

## 5.2.2: ṢĀNIʿĪ AND OBLIGATORY *KHULʿ*

This section will use two of Ṣāniʿī's works. The first and most important one is his *Vujūb-i Ṭalāq-i Khulʿ bar Mard*[431] (The Obligation of *Khulʿ* upon Men), which forms part of his 'Law and Life' series (*Fiqh va Zindigī*). The second is his large commentary on Khumaynī's *Taḥrīr al-Wasīlah*,[432] which is an edited transcription of Ṣāniʿī's advanced seminary lessons. I will mostly deal with the former, as the latter does not discuss the matter extensively, since Khumaynī himself barely made any reference to the subject in his written works. Finally, not all of Ṣāniʿī's intentions or elaborations are present in his works. Fortunately, I have had the opportunity to engage in email conversations with his head office as well as personal elaborations by himself on his views via people whom I delegated to meet him.[433]

Ṣāniʿī is not only interested in making *khulʿ* obligatory in cases that there is certainty that the wife may fall into sin. His major project is to make *khulʿ* obligatory in cases where

---

[431] Yūsuf Ṣāniʿī, *Vujūb-i Ṭalāq-i Khulʿbar Mard* (Qum: Maytham-i Tammār, 2008).
[432] Yūsuf Ṣāniʿī, *Fiqh al-Thaqalayn fī Sharḥ Taḥrīr al-Wasīlah: Kitāb al-Ṭalāq* (Tehran: Muʾassasat Tanẓīm wa Nashr Āthār al-Imām al-Khumaynī, 2001).
[433] During the writing of this thesis, it was not possible for me to meet him personally. My second option was to have a series of questions presented to him via associates and colleagues who met him in Iran on my behalf.

there is a basic possibility for sin and sexual vice, as well as in the event that a wife is simply unhappy with her marriage. For Ṣāniʿī, restricting women in unhappy marriages will lead them to dislike Islam and not just sinning, thus create another problem of salvation in the community.

## 5.2.3: INTRODUCING *KARĀHAH* IN A DIFFERENT PERSPECTIVE

After defining *khulʿ* and *karāhah* in the usual manner, Ṣāniʿī presents a different definition of *khulʿ* which he borrows from the 15th century Imāmī jurist Fāḍil al-Miqdād al-Suyūrī (d. 1422). He believes that al-Miqdād's definition better reflects how *khulʿ* is experienced by women:

> ...the wife's *karāhah* in regard to her husband is on the same category of being [his] prisoner (*maʾsūrah*) by which she gives him something [in order to free herself].[434]

Some jurists frame obligatory *khulʿ* in a way where the wife is at fault, and that this fault is rooted in her rebelliousness. It is the husband who finds fault with the wife, and thus divorces her. However, when it is the wife who seeks divorce in a state of *karāhah*, she is legally categorized as (potentially) rebellious, that is, a potential *nāshizah* – at least in so far as obligatory *khulʿ* is involved. The legal description and terminology presumes innocence on the husband's part and guilt on the wife's part, whatever the reality or whatever the jurist himself might perceive. Put differently, the husband is (generally) understood as the subject in the divorce, whereas the wife is the object. She does not become the subject when the husband is at fault, but only when she rebels against established norms. For Ṣāniʿī, the usage of such terminology is problematic and unfair to women. He thus seeks to redress the semantic framing

---

[434] Al-Suyūrī, *Tanqīḥ al-Rāʿi li-Mukhtaṣar al-Sharāʿi*, III, 359, Ṣāniʿī also traces a similar definition given by Muḥammad b. Ḥasan b. Yūsuf al-Ḥillī (Fakhr al-Muḥaqqiqīn) (d. 1369), see *Īḍāḥ al-Fawāʾid fī Sharḥ Mushkilāt al-Qawāʿid*, III, 375.

of divorce by situating the wife as a subject with the presumption of innocence whilst being in a state of *karāhah*.

## 5.2.4: THE DIVISIONS OF *KHULʿ*

Relying on his preferred method of tracing his views to classical Imāmī jurists, Ṣāniʿī presents a brief account of ʿAllāmah al-Ḥillī's four-fold categorization of *khulʿ* into forbidden (*ḥarām),* permissible (*mubāḥ*), recommended (*mustaḥabb*) and obligatory (*wājib*):[435]

1) Forbidden *khulʿ*: If the husband compels his wife to *khulʿ* whilst the wife is at no-fault, the process is void and the husband is forbidden from spending anything that he acquired from the wife through such means. This is in accordance with the consensus of the Imāmī school.[436] If the husband compels her for *khulʿ*, the process will be considered a revocable divorce and the husband will be liable for the dower.

2) Permissible *khulʿ*: If the wife despises her husband and fears that she will fall into sin vis-à-vis her husband's rights, then it is permissible for her to give him her dower or some other form of compensation so that he may divorce her.

3) Recommended *khulʿ*: If the wife threatens to bring someone into the house whom the husband hates and alludes to a possible relationship with another man, *khulʿ* is then recommended, according to jurists such as Ibn Idrīs and Muḥaqqiq al-Ḥillī.

4) Obligatory *khulʿ*: The reasoning is similar to the previous category, except that some jurists believe that *khulʿ* becomes obligatory as opposed to recommended, especially when there is certainty that *nushūz* will come about, or it has already happened. At this point, after having agreed to a certain amount of compensation, the husband is

---

[435] Ḥasan b. Yusuf b. Muṭahhar al-Ḥillī, *Qawāʿid al-Aḥkām*, III, 156-157.
[436] Muḥaqqiq al-Ḥillī, *Sharāʾi al-Islām*, III, 41.

obligated to divorce his wife. Ṣāniʿī adds that as much as the wife may make her hatred towards her husband explicit and even express a desire to marry someone else, the hatred does not need to reach a point where there would be fear of immediate and direct sin.[437] Rather, the wife may ask for *khulʿ* based on any degree of *karāhah*, and the husband must divorce her so that she may "live freely and continue on with her life."[438] This process, according to Ṣāniʿī, is fair and just as the husband acquires the dower, either in full or in part, and the wife in return "reclaims ownership of her vagina".[439] Ṣāniʿī does not dismiss concerns for sin and salvation. To the contrary, one of the underlying drivers of his push for obligatory *khulʿ* is to prevent disenchantment from Islam, a problem that is as problematic as sexual vices as it also endangers the salvation of the community.

Ṣāniʿī concludes that disagreement has largely revolved around the last point, that is, whether *khulʿ* is obligatory or not. He states that, in opposition to the popular view amongst Imāmī jurists, four jurists have deemed it obligatory, these being: Shaykh al-Ṭūsī, Ibn Zuhrah, Abā al-Ṣalāḥ and Ibn al-Barrāj. Ṣāniʿī, however, does not make mention of al-Rāwandī, despite the fact that he explicitly expressed such an opinion by adopting Shaykh al-Ṭūsī's phrasing. It is possible that he might not have considered al-Rāwandī's opinion very important, as no other jurist, as far as I have seen, has made explicit mention of him.

## 5.2.5: WHY KHULʿ IS OBLIGATORY

Ṣāniʿī counts three bases on which *khulʿ* can be argued to be obligatory:

---

[437] Yūsuf Ṣāniʿī, *Vujūb-i Ṭalāq-i Khulʿbar Mard*, 29.
[438] Ibid., 30.
[439] Ibid.

1) The Principle Commanding the Good and Forbidding Evil,

2) Contractual Law (*ʿuqūd*) and

3) Reason (*ʿaql*).

## 5.2.5.1: COMMANDING THE GOOD AND FORBIDDING EVIL

Ṣāniʿī's is interested in making *khulʿ* obligatory in cases of probable sin, or a wife's discontent (*karāhah*) of her husband and/or marriage. His preferred argument is the soteriological argument of his predecessors, namely Commanding the Good and Forbidding Evil which can operate on many levels. First, the fear of probable *nushūz* is grounds for obligatory *khulʿ*. Second, if a woman is unhappy with her marriage and initiates *khulʿ* and the husband refuses, this puts her in danger of falling into sin, either by being sexually disobedient, commit a sexual vice or become disenchanted with Islam. In order to remove that danger, a husband must be obligated to dissolve the marriage. However, three major objections are raised against this line of argument, that is, the fear of probably sin, each of which Ṣāniʿī attempts to respond to.

    a) Objection One: If this principle is applied to *khulʿ*, it would also apply to other forms of divorce as there is no reason to single out *khulʿ*. Ṣāniʿī replies to this objection by arguing that this principle cannot be extended to other forms of divorce like *ṭalāq* as it would be creating another legal dilemma by oppressing the husband. That is, a husband who does not have contempt or *karāhah* for his wife would not only suffer 'psychological' and 'emotional' distress, but would be punished financially as well, as he would have to pay his wife her dower. Therefore, such oppression cannot be allowed; thus positioning *khulʿ* as the only reasonable method of female initiated obligatory divorce.

b) Objection Two: Forbidding what is Evil is only applicable to actual sins, or sins that are certain to come about, and not probable acts. In other words, the sin must be present in order to forbid it; thus *khulʿ* cannot be obligatory on the basis of potentiality. *Khulʿ* can only be obligatory if there is certainty that *nushūz* will happen, or if it has already happened. Ṣāniʿī responds that prevention is better than the cure; thus forbidding (*nahī*) future (possible) sin is even more desirable. Second, both are the same, as their purpose is to either prevent a sin from occurring or prevent it from repeating itself. To prevent what has happened is absurd and would make the principle futile, as the act has already happened.

c) Objection Three: If it is assumed that *khulʿ* is absolutely and unconditionally obligatory on the husband, then Forbidding Evil comes at the expense of the husband's right, that is, his right to remain with his wife if he desires. If the argument is taken to its logical conclusion, then a slave-master would also lose the right to ownership over his slaves as they could threaten to fall into sin and thus obligate their masters to free them. Additionally, applying the principle of *nahī ʿan al-munkar* this way is contradictory, as by preventing one evil, the jurist creates another. In other words, marriage is subverted and a husband is left wifeless, which may open the door for illicit sexual behavior and thus create a whole new soteriological crisis. In answering this objection, Ṣāniʿī agrees that the principle of Forbidding Evil cannot be at the expense of someone else's right, as it defeats its own purpose. However, he does not believe that the principle violates the husband's right, since it operates in a way similar to a cancellation of a commercial transaction, in which the exchanged goods are returned to their original owners and no one's rights are violated. In other words, although *khulʿ* is a *ṭalāq*, it is comparable to

*faskh* in this case.[440] In this context, the husband does not lose anything, as he acquires back the ownership to the wife's dower, while the wife in return acquires her original ownership over her vagina. As such, although the major premise of the argument is correct, the minor premise is irrelevant. Ṣāniʿī adds that another objection that might be raised is that an evil is still created as the husband is left wifeless, thus again going against the purpose of *nahī ʿan al-munkar*. Ṣāniʿī replies that if we accept this line of argument, an evil is also committed against the wife under normal divorces as well, as the wife is left husbandless and marriage is also subverted. Why don't jurists use these concerns to curtail a husband's right to divorce? In reality, however, no one is oppressed, as everyone has their initial objects of exchange (at the time of marriage) returned to them. He also adds that the husband might even "profit more as he took sexual pleasure from the wife before dissolution" and "enjoyed them without cost..."[441] In a separate oral discussion, Ṣāniʿī adds that even in the event of a divorce, a man or wife can get remarried and on this basis, the institution of marriage will remain unthreatened.

## 5.2.5.2: CONTRACTUAL LAW

Marriage, Ṣāniʿī reminds us, is analogous to a contract between two parties. According to the people of reason (*ʿuqalā*), if freedom of action is given to one party, reason demands that the other party, who is a consenting individual freely partaking in the contract, should also be

---

[440] Ṣāniʿī, *Fiqh al-Thaqalayn*, 509.

[441] Ṣāniʿī, *Vujūb-i Ṭalāq-i Khulʿbar Mard*, 42.

afforded that right. As such, if one party is allowed to cancel the contract, reason – in accordance with the principle of justice (ʿadālah) – states that the other party should also have that right, and this stance on contractual law, Ṣāniʿī points out, is agreed by all jurists. Therefore, if the husband has the right to cancel the marriage contract by paying the wife her dower, the wife should be allowed to cancel the marriage by forgoing the dower. At this point, Ṣāniʿī attempts to bolster the moral framework of his argument and its new ethical *ratio legis* by appealing to the "Sharīʿah's principles of justice" (as he calls them) that are rooted in Q6:115: "The word of your Lord has been fulfilled in truth and justice. Nothing can change His words, and He is the All-hearing, the All-knowing" and anything contrary to this would be tantamount to oppression – and God is not an oppressor (ẓālim) according to Q41:46: "Whoever acts righteously, it is for his own soul, and whoever does evil, it is to its detriment, and your Lord is not tyrannical to the servants".

It is also true that one may choose to forgo one's right to cancel a contract. However, Ṣāniʿī is quick to acknowledge that biological sex "is not a choice" (*amr-i ghayr-i ikhtīyārī*);[442] therefore it cannot be a factor that strips the wife of her right to cancel the marriage contract. This notion of sexual determinism in the law, according to Ṣāniʿī, is also made explicit in Q42:49: "To God belongs the kingdom of the heavens and the earth. He creates whatever He wishes; He gives females to whomever He wishes, and gives males to whomever He wishes".

---

[442] Ṣāniʿī, *Vujūb-i Ṭalāq-i Khulʿbar Mard*, 44.

## 5.2.5.3: THE RULE OF REASON (*ḤUKM-I ʿAQL*)

"Reason" (*ʿaql*), according to Ṣāniʿī, deems it "shameful" (*qabīḥ*) that a man should be allowed to dissolve his marriage without the consent of his wife by giving her dower, but deny her the same right by forgoing the dower. Ṣāniʿī states that reason is not infallible in deriving moral principles. When mistakes happen, the function of the Sharīʿah is to correct the mistakes of such reasoning. However, it must do so in a clear fashion and on the basis of multiple explicit textual sources (*nūṣūṣ-i farāvān va ṣarīḥ*), rather than isolated traditions. Ṣāniʿī thus believes that his view of "reason" is an objective source of morality, one which he implicitly believes is independent of the discursive environment in which moral ideas are produced in. He holds the view of moral objectivity and universal reason as nearly normative to the Imāmī tradition. "Reason," supports the notion of rights based gender equality, and in the absence of traditions that oppose gendered divorce equality, this view should be a source of law. The only tradition that gives support to the opposing view is the one that states "divorce is in the hands of the one who took [the woman's] leg', which, according to Ṣāniʿī, if understood literally, is "against the principle of justice and rejection of oppression" (*mukhālif-i aṣl-i ʿadl va nafī-i ẓulm*) in Islamic law[443] and does not meet the clear and explicit requirements needed to override the moral imperatives of human reason and by extension, Islam.

## 5.2.6: ANALYSIS OF OBJECTIONS AGAINST OBLIGATORY *KHULʿ*

There are two legal technicalities that can be argued against obligatory *khulʿ* that Ṣāniʿī addresses. The first is that Prophetic traditions state that only the husband is to have the

---

[443] Ibid., 45.

exclusive prerogative of marital dissolution. In other words, only husbands, by default, have the freedom to end their marriages. In this sense, women cannot be given the same entitlement as men do in their power for divorce. The second objection concerns the *khulʿ* settlement. The husband can technically ask for such a high sum of money that it would be impossible for the woman to pay, as he is legally allowed to ask for more than the dower. The following is Ṣāniʿī's response to the objections against *khulʿ*:

## 5.2.7: THE TRADITIONS

The primary tradition by which Imāmī jurists make marital dissolution (be it through conventional *ṭalāq* or *khulʿ*) an exclusively male prerogative is the following:

> Muḥammad b. Yaḥyā [from] Yahyā b. ʿAbd Allāh b. Bakīr [from] Ibn Lahīyʿah who reported to us from Mūsā b. Ayyūb al-Ghāfiqī, from ʿIkrimah, from Ibn ʿAbbās who said: A man came to the Prophet (May God's Peace and Blessings be upon him) and said: My slave-master (*sayyidī*) married me to his bondswoman (*amah*) and now wants to separate us. Ibn Abbās then said: The Messenger of God went up the pulpit (*minbar*) and said: There is nothing wrong for any of you in marrying his bondsman to his bondswoman. [However], if he wants to separate them afterwards [then he should know] that surely divorce is in the hands of the one who took [the woman's] leg' (*al-ṭalāq li-man akhadha bi-al- sāq*). [i.e. the husband.] [444]

Ṣāniʿī gives a twofold critique of this tradition:

A) The tradition's chain of transmission (*sanad*) and B) its meaning (*dalālah*).

1)  Chain of Transmission: Ṣāniʿī states that there are two problems with this chain of transmission. First, the tradition is an exclusively Sunnī one and has not come through Imāmī chains of transmission. Second, according to Sunnī standards, its chain of

---

[444] Ṣāniʿī quotes this tradition from Ibn Mājah, *Sunan* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d), 349; Bayhaqī, *al-Sunan al-Kubrā*, (Damascus: Dār al-Fikr, n.d), XI, 270; al-Dāraquṭnī, *Sunan al-Dāraquṭnī*, 4 vols. (Beirūt: Dār Ṣādir, n.d) IV, 37.

transmission is faulty, as Ibn Lahīyah is considered weak (*ḍaʿīf*).[445] Even if we consider

its other route of transmission (*ṭarīq),* it is still weak, as the chain contains al-Faḍl b.

Mukhtār, who is also a problematic transmitter.[446]

2) Meaning of the Tradition: Even if the tradition is accepted despite the problems with its

transmission, Ṣāniʿī does not believe that we can infer that divorce is exclusively a male

prerogative, as the tradition is intended to restrict the slave-owner from dissolving the

couple's marriage and not the wife from seeking divorce. As such, it is possible that the

tradition is referring to a "third- party restriction" (*ḥaṣr-i iḍāfī*), limiting marital

dissolution to the couple and not a third party i.e. the slave-master. This is opposed to

the tradition pointing towards an exclusive restriction (*ḥaṣr-i haqīqī*) whereby it is the

sole prerogative of the husband to the exclusion of all others, including the wife.

Whatever the interpretation, as the tradition can be understood in varying ways, Ṣāniʿī

uses a principle in Imāmī legal theory that states "if [an alternative] possibility comes

about, the [legal] inference is void" (*idhā jāʾa al-iḥtimāl baṭala al-istidlāl*)[447] in order

to invalidate the opposing position. In other words, since the tradition can be

interpreted differently, it cannot be held as a solid proof for making *khulʿ* non-

obligatory. Even if we were to assume that the tradition points to an exclusive

restriction, it nevertheless refers to a normal *ṭalāq* or a male initiated repudiation, and

not *khulʿ.*

---

[445] Muḥammad Ibn Saʿd, *al-Ṭabaqāt al-Kubrā*, 8 vols. (Beirut: Dār Ṣādir, n.d), VII, 516.
[446] Al-Dhahabī, *Mīzān al-ʿItidāl fī Naqd al-Rijāl*, 4 vols., ed. Muḥammad al-Bājāwī (Beirut: Dār al-Maʿrifah,1980), III, 358.
[447] It is alternatively called "if [an alternative] possibility comes about, the inference is dropped" (*idhā jāʾa al-iḥtimāl saqaṭa al-istidlāl*), see al-Khwājūʾī al-Māzandarānī, *al-Rasāʾil al-Fiqhīyah*, I, 81.

Either way, the tradition does not contradict obligatory *khulʿ*. In theory, it is the husband who is repudiating his wife even when *khulʿ* is obligatory. This argument also applies to another tradition that is used against obligatory *khulʿ*. The tradition reports that a woman gave her husband a dower and stipulated in her marriage contract that divorce and authority over intercourse (*jimāʿ*) be in her hands, to which al-Ṣādiq replied: "she went against the Prophetic guidelines" as "the giving of a dower, divorce and sexual authority is in his hands" (*ʿalayh al-ṣidāq wa al-jimāʿ wa-al-ṭalāq*).[448] In other words, obligatory *khulʿ* does not, theoretically speaking, give the wife the right to divorce her husband; but it only *obligates him to divorce her*. Additionally, *khulʿ* by default is not obligatory so as to give the wife the instantaneous right to marital dissolution. Rather, it only becomes obligatory when the husband refuses to agree to the wife's initiation, as this imposes hardship on her (*ḥaraj*)[449] and may make her vulnerable to sin. The principle of hardship, as Ṣāniʿī sees it, is not restricted to *khulʿ*, as the husband can also be forced to repudiate his wife through regular *ṭalāq* by a judge if he is at fault and fails to respect her rights. Therefore, none of the traditions apply to *khulʿ*, as by default, it is not obligatory; and more importantly, it is still the husband who is *formally* repudiating the wife and not vice versa.

## 5.2.8: THE MAHR SETTLEMENT

There are many traditions that unequivocally state that a husband may ask for more than the dower in a *khulʿ* settlement. This creates an important practical barrier against obligatory *khulʿ*, by far the most difficult and complex problem that Ṣāniʿī has had to deal with. In a *mubārāt*

---

[448] Ḥurr al-ʿĀmilī, *Wasāʾil al-Shīʿah*, XXI, 289.
[449] Ṣāniʿī, *Vujūb-i Ṭalāq-i Khulʿbar Mard*, 57.

dissolution, the husband may not ask for more than the stated dower. However, in *khulʿ*, the husband may ask for more even if the demand is beyond the wife's means. In order to solve this problem, Ṣāniʿī seeks to play down those traditions that allow payment in excess of the *mahr* by pointing to their inner contradictions, while supporting his own stance through recourse to the Qurʾan.

First Group of Traditions

1) Samāʾah b. Mihrān said: I said to al-Ṣādiq that it is not permissible for a man to take from a woman separated through *khulʿ* until she pronounces this utterance in full. Al-Ṣādiq replied: [that is] if she says "I will not obey God when it comes to you" (*lā uṭīʿu Allāh fīk*), it is permissible for him to take from her what he finds.[450]

2) Al-Bāqir is reported to have said: If a woman says to her husband the [following] phrase: "I will not obey you" (*lā uṭīʿu lak*) in an explicit (*amran mufassaran*) or implicit fashion (*ghayr mufassarin*), it is permissible for him to take from her and he cannot take her back anymore [i.e. the repudiation becomes irrevocable].[451]

These authentic traditions are acceptable, according to Ṣāniʿī, as they are within the category of circumstantial utterances (*maqām-i bayān*). In other words, traditions that use the sentence "it is permissible to take from her what he finds" and similar words do not lay down any principle where the husband by default can ask for more than the dower. Rather, they only permit it in particular instances if a judge deems it necessary. What Ṣāniʿī is alluding to is that it is not rare for women to ask for low dowers when contracting their marriage, as the Prophet and Imāms often advised women to do so in order to dissuade couples from pursuing worldly

---

[450] Ḥurr al-ʿĀmilī, *Wasāʾil al-Shīʿah*, XXII, 279.
[451] Ibid.

interests in an institution that is primarily salvific in intent. Ṣāniʿī is alluding to a practice by many Shīʿī women in Iran who have customarily stated their dowers to be flowers and candy sticks (*shākh-i nabāt*) which are of little monetary value. If a dower is deemed to be low in value, then the judge may allow the husband to ask the wife for more than the stated dower if she can afford it. The opposite in Imāmī law is also valid. If a husband repudiates his wife but little or no dower was stipulated when the marriage was contracted, the judge may order the husband to give the wife a reasonable dower that is in accordance with customary norms and her social status (*mahr al-mithl*).

Second Group of Traditions

1) Zurārah narrated from al-Bāqir who said: In *mubārāt*, a man can only take less than the dower (*ṣidāq*); however, in *khulʿ*, he may take any amount he wishes and can take what they agreed upon, which can be equal to or more than the dower. Al-Bāqir repeated: In *khulʿ* the husband may take as much as he wants.[452]

2) Samāʾah narrated that if he separates from her through *khulʿ*, then the dissolution is irrevocable and he is allowed to take from her what he assesses [to be appropriate in taking]. However, in *mubārāt* he is not allowed to take all of which he gave to her [in terms of dower].

Ṣāniʿī admits that both traditions are authentic yet on the subject of *mubārāt*, they contradict another tradition that is equally authentic. This is the tradition from Abī Baṣīr in which he relates that al-Ṣādiq said the following about *mubārāt*: "...it is not permissible for her husband

---

[452] Ibid., 287.

to take from her except her dower or less than it."[453] That the two traditions above state that one may not take the full dower while the third allows it, a clear contradiction, for Ṣāniʿī. He thus believes that both traditions cancel each other out and lose their evidentiary value in the law (*ḥujjīyah*).[454] It might be said that this contradiction does not exist in the traditions when they discuss *khulʿ*; however, Ṣāniʿī states they cannot be taken separately, as there is a connector (*ʿatf*) in one of the sentences (i.e.ʿ*waw*', and) between both subjects. Therefore, both traditions must be cancelled out.

As a consequence, one is left with two choices. According to the procedures of Imāmī jurisprudence, one either chooses (*takhyīr*) between the traditions, or drops them both and derives rulings from legal theory and its principles (*uṣūl wa qawāʿid al-awwalīyah*).[455]

## 5.2.9: THE PRINCIPLE OF 'JUSTICE'

Ṣāniʿī believes that the primary ethical principles and rules of Islam do not allow a husband to ask for more than the dower. He considers justice (*ʿadālah*) to be one of these principles. The principle of justice must act as a scale (*mīzān*) and standard (*miʿyār*) for Islamic rulings, and not the other way around. What this implies, according to Ṣāniʿī, is that whatever "justice says" is what "religion says," and not that whatever is uttered by a jurists is just. Ṣāniʿī assumes that opposing jurists do not make reference to justice in their rulings, even implicitly, as their views are not in agreement with his own moral standards. As a consequence of this

---

[453] Ibid., 287-288.
[454] Ṣāniʿī, *Vujūb-i Ṭalāq-i Khulʿbar Mard*, 63.
[455] Ibid.

theological position, reason can produce laws based on the principle of justice. This, according to Ṣāniʿī, has been the historical position of both the Shīʿīs and Muʿtazilīs.[456]

According to Ṣāniʿī, the pagan, pre-Islamic era (*jāhiliyah*) position was that religion was the measure (*miqyās*) for justice; and on that basis, people attributed all sorts of despicable (*zisht*) practices to "religion." Ṣāniʿī uses Q7:28 to support his point:

> When they commit an abomination, they say: "We found our forefathers practicing it and God has commanded it upon us". Say: "Indeed God does not enjoin abominations". Do you attribute to God what you do not know?!

## 5.2.10: THE QURʾAN AS A 'LEGAL PARADIGM'

Discrimination in dower payments, Ṣāniʿī believes, is oppressive, as one spouse disadvantages and discriminates against the other based on gender, a matter in which one does not have a choice in (*amr-i ghayr-i ikhtiyārī*). Discrimination of this sort is oppressive and cannot be in accordance with Q41:46 "...and your Lord is not an oppressor to His servants". Ṣāniʿī also refers to Q57:25: "We sent Our apostles with clear proofs, and We sent down with them the Book and the Scale so that humankind may uphold justice." As with justice, Ṣāniʿī adopts and constructs a modern discursive model of oppression and uses it as a universal and objective standard for filtering juristic conclusions.

Ṣāniʿī does take into account other criticisms directed against this method. The most prominent of which is how he gives precedence to a moral discourse over strict adherence to the source-texts. Ṣāniʿī responds that giving precedence to the Qurʾan over traditions is the standard norm for all Muslims when assessing the credibility of any tradition, if anything, he is giving the source-texts primacy in the law by using the Qurʾan's moral worldview as its *ratio-*

---

[456] Ibid., 65.

*legis*. Here he makes the assumption that his detractors do not use the Qurʾan as a moral compass for the law, a claim which he does not substantiate.

He then proceeds to offer an example where the Qurʾan trumps over, and annuls certain claims made in Imāmī traditions. For example, authentic Imāmī traditions that claim that the Qurʾan has been distorted (*taḥrīf*) but these traditions have been rejected on the grounds that they contradict verses in the Qurʾan that state that such a thing could never occur.[457] Ṣāniʿī notes that Imāmīs also reject authentic traditions when they conflict with rational principles; in which case, they should certainly be rejected if they conflict with the Qurʾan. For example, many traditions state that the Prophet at one point missed his morning prayers; however, most Imāmīs have rejected the tradition as it conflicts with the Imāmī rational doctrine of the Prophet's full infallibility.[458] As such, Ṣāniʿī does not seem to believe that he is doing anything out of the ordinary and that he is actually following traditional methods of *ḥadīth* criticism. Ṣāniʿī tries to clarify that he is not imposing an independent form of reasoning upon the Qurʾan and Prophetic traditions, as such a method would be conjectural (*ẓannī*) and dangerous. He states that the only rational principles one may use are those that are confirmed in the Qurʾan and accredited Prophetic traditions, as those are infallible sources. If Ṣāniʿī is using ideas taken from modern equal-rights discourse, he does so because justice and equality are legitimated by the Qurʾan. Gender equality and justice, Ṣāniʿī argues, are in accordance with and confirmed by divine sources. Ṣāniʿī further adds that the principles of justice and equality are restricted to matters that do not pertain strictly and solely to ritual acts (*taʿabbudāt*), as ritual practices are spiritual matters that cannot be judged rationally.[459] Social matters, on the other hand, can be

---

[457] Ṣāniʿī is making reference to various verses that indicate that God will protect the Qurʾan from distortion. See for example Qurʾan 15:9 where it is said that "...and indeed We will preserve it".
[458] See Ṣāniʿī, *Vujūb-i Ṭalāq-i Khulʿbar Mard*, 68.
[459] Ibid., 71.

judged by reason, as they have more to do with the social welfare which can be understood rationally.

Ṣāniʿī does not address the historical understanding in Imāmī law that marriage was not just a contractual and juridical area of the law (*muʿāmalāt*), but also a ritual practice and a matter of worship (*ʿibādah*) of which divorce was relevant to, nor does he address matters that are strictly ritual, but still socially relevant, such as charity taxes like *khums* and *zakat*. More importantly, Ṣāniʿī does not address how his understanding of justice, oppression and equality is somehow normative to the Qurʾan or how his conception of equality is not anachronistic to the tradition. He does not address the countless Imāmī commentaries that historically diverged from his view. The Qurʾan may be espousing justice and negating oppression, but the historical conceptualization and implication of those terms are by no means explained by Ṣāniʿī. For these reasons, it is highly likely that his understanding of equality does not presuppose normativity but objectivity instead. As far as his arguments are concerned, he seems to imply that an objective understanding of the Qurʾan as promoting equal rights needed to wait for the twentieth century to be discovered. If this is his approach, which is most likely the case, then Ṣāniʿī is subscribing to an evolutionary model of history which finds at its center the idea of moral progress, a staple of hegemonic liberal discourse. By introducing equality and progress as a new model of discourse for Shīʿī law, Ṣāniʿī inevitably, if unwittingly, participates in the modern process of consummating Islamic law into a new discursive sphere of liberal power and domination.

5.2.11: THE MAHR AS A CONDITION IN THE MARRIAGE CONTRACT

One solution that has been proposed to counter the husband's demand for large payments for *khulʿ* is the use of contractual conditions where the wife can stipulate that her husband may not ask for more than the dower if she were to initiate *khulʿ*. Ṣāniʿī believes that such an approach is problematic and also tantamount to oppression. In his view, contractual conditions of this kind have a serious deficiency (*naqṣ*), as they make justice for women conditional but universal for men. However, universal laws of justice cannot be conditional. Stipulating such a contractual condition is oppressive as many women do not stipulate such things in their contracts for a variety of personal reasons (e.g. ignorance, carelessness etc.); therefore, to require a condition in the contract to protect oneself against excessive payment would be discriminatory against a large portion of women who are unaware of the intricacies of Islamic contract laws. Ṣāniʿī concludes that this law of non-excessive *mahr* must be universal and unconditional.

5.2.12: THE 'QURAʾANIC VIEW' ON MAHR

Some, according to Ṣāniʿī, might argue that Q2:229 "...there is no sin upon them in what she may give to secure her release" does not put a limit on how much compensation the husband may require of his wife. Therefore, the husband may ask for more than the dower in *khulʿ*. Ṣāniʿī challenges this view by arguing that the verse does not say that the husband can take whatever he likes from the wife, but only gives a choice to the wife that she may give him something in exchange for a divorce. It is therefore her choice and not that of the husband. Furthermore, what she gives to him is of her dower, as that is what the previous sentence of the

verse states. To assume otherwise would not only go against the spirit of the verse, but it is also irrational, as the husband may ask for such an amount that it would be impossible for her to pay him, thus rendering the process of *khulʿ* impractical and futile.[460]

## 5.2.13: THE HUSBAND'S REFUSAL OF THE SETTLEMENT AND WHY SALVATION MUST TRUMP TECHNICAL BARRIERS

If, in the end, the husband refuses to agree with a *khulʿ* payment, Ṣāniʿī rules that his refusal is irrelevant, as his acceptance of the object of exchange (*fidyah*) or dower is not necessary. Since the *khulʿ* settlement is not a real transaction (*li-ʿadam kawnihi muʿāwiḍah*) in which mutual agreement is needed. As such, an object of exchange (*badhl*) is not necessary in the first place.[461]

This brings Ṣāniʿī to the real crux of the matter on obligatory *khulʿ* and salvation. Despite all the extensive legal technicalities involved that inhibit the practice, they are, in the end, secondary as marriage is not a matter of business but a matter of human salvation. Even if all the technical objections against obligatory *khulʿ* were to remain unchallenged, the principle of Commanding the Good and Forbidding Wrong could still invert the whole process because

1) Marriage is not really a transaction but a form of worship and devotion to God – hence a fundamental question of human wellbeing and salvation. It is there to prevent humans from sin and create a grounds through which the believing community can spiritually survive and thrive.

---

[460] Ṣāniʿī, *Vujūb-i Ṭalāq-i Khulʿbar Mard*, 73.
[461] Ṣāniʿī, *Fiqh al-Thaqalayn*, 471.

2) Marriage must fulfill its function as a soteriological enterprise and making *khulʿ* non-obligatory would make its telos futile and incoherent because it would open the doorway to sin and disenchanting people, especially women, away from Islam.

## 5.3: CONCLUSION

When the potential for future *nushūz* or sexual disobedience, or the fear of committing zinā, is *admitted* by the wife (explicitly or implicitly) before the sin comes about, the principle of Commanding the Good and Forbidding Evil may be applied differently than when future *nushūz* is only suspected in her behavior by her husband. In other words, the expression of *karāhah* by the wife, even if she does not fully spell it out, is different than potential *nushūz* in so far as *karāhah* is an expression of her own agency either explicitly or implicitly against her own predicament of an undesired marriage. Within this context of marital discord, *khulʿ* differs from potential *nushūz* - as a potential failing in virtue - in so far as she expresses a willingness, from the get-go, a dissolution of her marriage because she knows she will no longer be able to maintain her piety if she continues to live with her husband. As wife-beating is a response aimed at preventing the possibility of future unvirtuous behavior, *khulʿ* is a response to the absence of such a possibility.

As such, a number of Imāmī jurists have opted for making divorce obligatory when the risks of sin and sexual vice outweigh concerns over the maintenance of patriarchal power relations that exist between wife and husband in the realm of marital dissolution. The enforcement of obligatory *khulʿ* divorce is not only an imperative on the jurists or the community members that oversee and are involved in the process of divorce, but it is also made imperative on the husband, by God, to carry out his duty of Commanding the Good and

Forbidding Evil. Like the stories of individual and communal damnation that exist in the traditions (see chapter one), a husband may be subject to damnation if the marriage is permitted to continue with the prospect of sexual sin. Divorce is not only about the other (i.e. the spouse) but about the self. This is because marriage is a process where two selves are weaved into one self, as per Q2:187, meaning that the husband and wife are weaving sin out of this single self by ending the marriage and thereby recreating the two original selves again that is free of sin.

The inversion of male authority and prerogative in divorce vis-à-vis the threat to human salvation demonstrates that patriarchy, in so far as male and female power relations are involved in divorce laws, is not a necessary component of the law and may be inverted when it conflicts with the soteriological interests of the believing community. What is essential to marriage and divorce law is salvation, not patriarchy.

The introduction of obligatory *khulʿ* also helps solve a related but critical marital dilemma: how can marriage be a means for cultivating the pious self if it presents no way out when it fails to meet its telos of salvation? It is obvious for Muslim jurists that marriage does not always function as it is ideally supposed to. The doctrine of Commanding the Good and Forbidding Evil must therefore create a way in which the piety of the wife in question can remain intact when her marriage to an unresponsive husband becomes a means for her disobedience to God. Preserving Islam's function as a means for the cultivation and preservation of *īmān* is the paradigmatic function of the Sharīʿah.

Yusūf Ṣāniʿī, a modernist jurist, has also framed his ruling of obligatory divorce as a matter of gendered soteriology. In this sense, Ṣāniʿī's view has been in line with the historical framing of the debate on *nushūz* and divorce. However, Ṣāniʿī's equal-rights based argument

diverges from the mainstream Imāmī legal tradition thus shifting the discursive framework of Imāmī marriage and divorce law. Even so, his adoption of an equal rights-discourse does not stand against the imperative for salvation. For Ṣāniʿī, stricter divorce laws for women may lead to eroding people's commitment to Islam. This is in addition to his moral outlook that sees unequal divorce power as unfair and oppressive. His role as a popular jurist and his publicized activism represents an important discursive shift in Imāmī law and is currently gaining more ground with a new generation of jurists who - although may not agree with his reformist political views - are adopting the discursive hegemonies of equal-rights advocacy and thus "saving" women into a new sphere of power that may be more intractable than the first.

CONCLUSION

## 6.1: GENERAL CONCLUSION

This study began with a discussion of how recent scholarship on Islamic law and gender has

minimized the role that soteriology plays in shaping Muslim juristic discourse. More

specifically, it argues that current (feminist) academic discourse on Muslim juristic law and

gender does not currently – for the most part - give an ontological account of the self and how

marriage and gender regulations relate to the fashioning and soteriology of that self (however

that self may be construed in different juristic discourses.)[462] Marriage is largely framed as

(primarily) procedural rather than moral and hence the theological paradigm that frames the

matrix of its discourse is either ignored at best or rendered irrelevant. I argue that ignoring

marriage as a technology of the pious self - which finds itself in the matrix of the *qalb* - leads

to theological nihilism. By theological nihilism I am referring to a view of the law that sees

God as simply a lawgiver and punisher. It is a form of theological nihilism in so far as it

ignores or dismisses how the law may play into the larger choreography of the soteriological

and ontological self. In this approach, no serious teleological account of rights and duties are

given. Outside of procedural descriptions of the law, its relation to gender domination and

---

[462] On a side note, also common to this discourse, in so far as Muslim feminist critiques of Islamic law and patriarchy are involved, is the common failure, thus far, to articulate an Islamic conception of the good life as well. As Mohammad Fadel states, "while Muslim feminists have generally brought very valuable criticisms of the limitations of the classical and medieval tradition to modern Muslims' attention, their ability to transform this tradition has been hampered by a failure thus far to articulate a positive Islamic conception of a good life that can compete with that articulated by the pre-moderns. This failure, in turn, generates suspicion among traditionalists toward Muslim feminism insofar as it seems to provide no more than a critique of Islamic tradition in a manner that invites apostasy rather than reconstruction of a thick conception of an Islamic way of living in which gender equality would simply be one, among many, Islamic virtues," Mohammad Fadel, email message to author, October 24th, 2016.

anecdotal references to salvation, the soteriological and ontological paradigm that frames the law and its relation to God and the self is left unexplained.

As a result of this disengagement, Islamic law and marriage are mostly seen as secular activities primarily aimed at maintaining a gendered hierarchy in this world. If theology, salvation and the Hereafter play a role in Muslim juristic thought, it is to the extent that they are designed to reinforce patriarchy in *this world* and hence still function as an overwhelmingly 'worldly' project where overt relations and encounters with God and the self are minimal. Salvation from sin, even if meaningful, becomes subservient to the secular aims and activities of material life on earth. In addition to the new forms of subjectivity and interventionist powers that it makes Islamic law subject to, a key assumption of this scholarly approach – of which its disengagement from theological questions exacerbates and bolsters – is that it sees gendered hierarchy (which unequivocally favors men) as the underlying denominator and *integral* cosmology that animates juristic discourse on marriage and divorce. This implies that asymmetrical power relations are seemingly intractable in the juristic imagination of Muslim jurists, at least in its premodern form.

In response to this disengagement from theology and the assumptions that follow it on the integral nature of gender hierarchy in Muslim juristic discourse, I ask the following questions: how does marriage, as a ritual practice (as argued by Imāmī jurists) function as a technology of the pious self? To what extent do theological concerns for salvation and a believer's ontological bond with God - as well as the juristic programs for self-fashioning that make this salvation possible - shape the discursive framework of Imāmī law? How far can these salvific considerations go in limiting, expanding and possibly inverting juridical conclusions? Finally, although patriarchy is prevalent in the tradition, is it an essential and

integral aspect of the law's objectives in the imagination of Muslim jurists? Did the jurists themselves, especially the pre-modern ones, see gendered hierarchy as a fundamental component of most of their discourse on marriage? What did they do when rules that promoted asymmetrical power relations led couples, particularly women, to sin which could have potentially subverted the juristic program of self-cultivation? In this study, I chose to answer these questions within the framework of Twelver Shīʿī Imāmī law.

I chose Twelver Shīʿī law because it is not only one of the major legal schools of Islam, but because its premodern and modern legal tradition has seen the largest line of discursive continuity in marital law as far as I have seen in the various traditions of Islam. This continuity has largely remained intact due to the separation of the Imāmī juristic guild from the coercive powers of the state up until the mid-twentieth century as well as the *relatively* minimal effects of colonialism on its institutions when compared to other non-Imāmī juristic traditions in Islam. For this reason, identifying a collective memory of its legal tradition and answering these questions from that vantage point is a more fruitful task. This study answers these questions by examining six key areas in the Imāmī tradition where notions of salvation and spiritual ontology in marriage/divorce figure the most prominently: juristic preliminaries on marriage and zinā, interfaith marriage, prepubescent marriage, temporary marriage with zānīyahs, *nushūz* and *khulʿ* divorce.

In answering the above questions, this study makes two important contributions to the study of Islamic law and gender as well as the anthropology of Muslim (Imāmī) juristic discourse. The first (positive) contribution is in bridging the gap between the theological debates of pietistic ontology and soteriology on the one hand and Muslim legal discourse on the other. In other words, it establishes an important discursive link between Islamic law and

gender regulations on the one hand, and on the other, notions of the cultivation and formation

of the pious self as found in the matrix of the *qalb*, namely the metaphysical heart. The two

subjects – Islamic law and Islamic pietistic ontology -  are often studied separately in academic

studies of Islam. The latter is usually discussed under the rubric of Muslim mysticism, Sufism

and sometimes *kalām*. The mainstream discourse on gender and Islamic law, however, is not

entirely at fault for this absence. The juridical texts regularly contribute to this perception due

to their particular style of writing. The juristic guild that produces these texts and their

specialized jargon have mostly written their treatises for their own peers who are assumed to

already know the theological framework in which legal arguments are made in. What is left is

to demonstrate the effectiveness and logical precision of legal arguments in its rawest and most

refined form. In short, what really comes to limelight is the legal status of an action. As Kecia

Ali states,

> This jurisprudential concern with the moral status of an action is relatively
> uncommon, though not without parallel, in the texts on marriage and divorce.
> The jurists deal mainly with questions of permissibility.[463]

This does not mean, however, that all reference to the soteriology that animates its discourse is

lost. In Imāmī juristic discourse, the moral and soteriological context of the law surfaces

regularly in marriage law. Its legal discourse gives reasonable space for the soteriological

intents of its framing of gender relations in marriage. One the clearest sources of these intents

are to be found not only in the oral tradition of the jurists but in the commentaries of their

written works and the maxims or principles of the law, namely *al-qawāʿid al-fiqhīyah*. Many

of these maxims are derived from the theological doctrine of Commanding the Good and

Forbidding Evil. In the Imāmī understanding of the doctrine, Commanding the Good and

---

[463] Kecia Ali, "Money, sex and power", 190.

Forbidding Evil is a universal requirement of faith and salvation in the Hereafter as it is the central and morally compelling guide for the good and pious life. Lack of adherence to the doctrine, as the Imāmī tradition holds, can make even the sincerest of prayers futile. Given its importance, it naturally finds its way into the law under different guises. As a filter and check mechanism, its purpose is to align the first order imperatives (*al-aḥkām al-awwalīyah*) of the law with the soteriological aims of the Sharīʿah as understood by Imāmī jurists, and thereby producing second order imperatives (*al-aḥkām al-thānawīyah*) that are not just legally sound, but theologically acceptable as well.

The second (negative) contribution this study makes is its suggestion that patriarchy and gendered hierarchy are not necessary components of Muslim (Imāmī) juristic discourse. In other words, in the case of Imāmī juristic discourse, maintaining asymmetrical power relations between husbands and wives is not integral in its cosmology of marriage law. If Imāmī law has an ultimate cosmology that frames its essential and not simply its customary (*ʿurfī*) assumptions, that ultimate cosmology is the salvation of the metaphysical heart (*qalb*). Maintaining Islam as a program for the preservation and cultivation of *īmān* and thereby saving the heart by maintaining a healthy ontological bond with God is the basic function of the law in marriage and the telos of Imāmī legal and juristic tradition. Juristic culture, as inspired by the source-texts, assumes patriarchy as a useful and preferred means of social and legal organization that best prepares the believing community for salvation in the Hereafter. Yet Imāmī jurists understood that mainstream conclusions in marriage law could sometimes be counterproductive to the salvific aims of their project in saving humankind from damnation. Patriarchy and asymmetrical power relations between males and females were not excluded from this. As salvation was the ultimate aim of juristic practice, even seemingly intractable

assumptions that favored patriarchy could be inverted in order to protect Muslims of both genders from sin. The jurists thus sought to preserve the salvific function of marriage at the expense of male power, or maintain Islam as a program for pietistic self-formation when marriages inevitably broke down by making divorce necessary, even it meant inverting the husband's will. Patriarchy could therefore be discarded by the same jurists who advocated it in the first place. As long as the coherence of Islam and its essential doctrines (both theological and legal) remained intact (e.g. the unity of God, the prohibition of zinā etc.,) Imāmī jurists were historically ready to invert almost any gendered hierarchal practice in the law so that Islam or Islamic marriage – as a program for pious activity– may have continued to function as a means and technique for the growth of *īmān*, the cultivation of the virtuous self and ultimately the sanctification of the *qalb* that would – as the jurists hoped – meet God on the Day of Judgment  as pure and sound as possible.

BIBLIOGRAPHY

**Non-Arabic/Persian Sources**

Abd-Allah, Umar F. "Theological dimensions of Islamic law," in *The Cambridge Companion to Classical Islamic Theology*, ed. Timothy Winter (Cambridge: Cambridge University Press, 2008).

Abou El Fadl, Khaled. "On Christian Men Marrying Muslim Women," Scholar of the House, accessed April 12th, 2015, http://scholarofthehouse.org/oninma.html.

Abu-Lughod, Lila. *Do Muslim Women Need Saving?* (Cambridge: Harvard University Press, 2013).

Afary, Janet *Sexual Politics in Modern Iran* (New York: Cambridge University Press, 2009).

Afshar, Haleh. *Islam and Feminisms: An Iranian Case-Study* (London: Palgrave MacMillian, 1998).

Ahmed, Sara. *Queer Phenomenology: Orientations, Objects, Others* (Durham: Duke University Press, 2006).

Ali, Kecia. *Marriage and Slavery in Early Islam* (Cambridge: Harvard University Press, 2010).

_____"Money, Sex, and Power: The Contractual Nature of Marriage in Islamic Jurisprudence of the Formative Period," (PhD diss., Duke University, 2002).

Amir-Moezzi, Mohammad Ali. *The Spirituality of Shiʿi Islam: Beliefs and Practices* (London & New York: I.B Tauris, 2011).

Archimandrite Zacharias, *The Hidden Man of the Heart* (I Peter 3:4): *The Cultivation of the Heart in Orthodox Christian Anthropology*, ed. Christopher Veniamin (Dalton: Mount Thabor Publishing, 2014).

Asad, Talal. *Formations of the Secular: Christianity, Islam and Modernity* (Stanford, Stanford University Press, 2003).

___*Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993).

Ascha, Ghassan. *Mariage, polygamie et repudiation en islam: justification des auteurs arabo-muslmans* (Paris: Editions L'Harmattan, 1998).

Bauer, Karen. *Gender Hierarchy in the Qurʾān: Medieval Interpretations, Modern Responses* (Cambridge: Cambridge University Press, 2015).

Bentley Hart, David. *Atheist Delusions: The Christian Revolution and Its Fashionable Enemies* (New Haven: Yale University Press, 2010).

Bhabha, Homi. *Location of Culture* (New York: Routledge, 1994).

Biale, Rachel. *Women and Jewish Law* (New York: Schocken Books, 1995).

Judith Butler, "Critically Queer," in *The Routledge Queer Studies Reader* ed. Donald E. Hall, Annamarie Jagose, Andrea Bebell and Susan Potter (New York: Routledge, 2013).

___"Is Judaism Zionism?" in *The Power of Religion in the Public Sphere*, ed. Eduardo Mendieta and Jonathan Vanantwerpen (New York: Columbia University Press, 2011).

Chaudhry, Ayesha S. *Domestic Violence and the Islamic Tradition* (Oxford: Oxford University Press, 2013).

Cook, Michael. *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2004).

El-Roueyheb, Khaled. *Before Homosexuality in the Arab-Islamic World, 1500-1800* (Chicago: University of Chicago Press, 2009).

Fadel, Mohammad. "A Tragedy of Politics or an Apolitical Tragedy," *Journal of the American Oriental Society* 131, no. 1 (September 2011): 109-127.

___ "Is Historicism a Viable Strategy for Islamic Law Reform? The Case of ʿNever Shall a Folk Prosper Who Have Appointed a Woman to Rule them'," *Islamic Law and Society* 18 (2011): 131-176.

___ "Political Liberalism, Islamic Family Law, and Family Law Pluralism," in *Marriage and Divorce in a Multicultural Context Multi-Tiered Marriage and the Boundaries of Civil Law and Religion*, ed. Joel A. Nichols (New York: Cambridge University Press, 2011).

Floor, Willem. *A Social History of Sexual Relations in Iran* (Washington, DC: Mage Publishers, 2008).

Foucault, Michel. *About the Beginning of the Hermeneutics of the Self: Lectures at Dartmouth College*, 1980, trans. Graham Burchell (Chicago: University of Chicago Press, 2016).

___*Technologies of the Self: A Seminar with Michel Foucault*, ed. Luther H. Martin, Huck Gutman and Patrick H. Hutton (Amherst: The University of Massachusetts Press, 1988).

___*The Use of Pleasure: Volume 2 of the History of Sexuality*, trans. Robert Hurley (New York: Vintage Books, 1990).

Giroux, Henry A. *Against the Terror of Neoliberalism: Politics Beyond the Age of Greed* (New York: Routledge, 2016).

\_\_\_Truthout. "Henry Giroux on the Rise of Neoliberalism." Accessed October 23, 2016. http://www.truth-out.org/opinion/item/26885-henry-giroux-on-the-rise-of-neoliberalism.

Gleave, Robert. *Inevitable Doubt: Two Theories of Shīʿī Jurisprudence* (Leiden: E. J. Brill, 2000); *Scripturalist Islam: The History and Doctrines of the Akhbārī Shīʿī School* (Leiden: E.J. Brill, 2007).

Guhin, Jeffrey. "The Violences of Knowledge: Edward Said, Sociology, and Post-Orientalist Reflexivity" in *Postcolonial Sociology (Political Power and Social Theory, Volume 24)* (Emerald Group Publishing Limited, 2013), 231-262.

Haeri, Shahla. "Temporary Marriage and the State in Iran: An Islamic Discourse on Female Sexuality" *Social Research* 59 no. 1 (1992): 201-223.

\_\_\_\_\_*Law of Desire: Temporary Marriage in Shi'i Iran* (Syracuse: Syracuse University Press, 1989).

Hallaq, Wael. *The Impossible State: Islamic, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013).

\_\_\_"On Orientalism, Self-Consciousness and History," in *Islamic Law and Society* 18 no. 3-4 (2010): 387-439.

\_\_\_Sharīʿa: *Theory, Practice, Transformations*, (Cambridge: Cambridge University Press, 2009).

Harvey, David. *A Brief History of Neoliberalism* (New York: Oxford University Press, 2005).

Hesford, Wendy S. *Spectacular Rhetorics: Human Rights Visions, Recognitions, Feminisms* (Durham and London: Duke University Press, 2011).

Hidayatullah, Aysha A. *Feminist Edges of the Qurʾan* (Oxford, Oxford University Press, 2014).

Hirschkind, Charles. "Heresy or Hermeneutics: The Case of Nasr Hamid Abu Zayd," *The American Journal of Islamic Social Sciences* 12, no. 4 (1995): 464-477.

Hurd, Elizabeth Shakman. *The Politics of Secularism in International Relations* (Princeton: Princeton University Press, 2008).

Ibn Rushd, *The Distinguished Jurist's Primer*, 2 vols., trans. Imran Ahsan Khan Nyazee (Reading: Garnet Publishing Ltd, 1996).

Imber, Colin. "Why Should You Poison Your Husband: A Note on Liability in Ḥanafī Law in the Ottoman Period", in *Islamic Law and Society*, vol. 1, no. 2, (1994): 206-216.

Izutsu, Toshihiko. *God and Man in the Qur'an: Semantics of the Qur'anic* Weltanschauung (Petaling Jaya: Islamic Book Trust, 2002).

Jackson, Sherman A. *Sufism for non-Sufis? Ibn ʿAṭāʾ Allāh al-Sakandarī's Tāj al-ʿArūs* (New York: Oxford University Press, 2012).

Jennings, Ronald C. "Divorce in the Ottoman Sharia Court of Cyprus, 1580-1640", in *Studia Islamica*, No. 78 (1993).

___ "Women in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri", in *Journal of the Economic and Social History of the Orient*, 18, No. 1 (Jan., 1975): 53-114.

Koktvedgaard Zeitzen, Miriam. *Polygamy: A Cross-Cultural Analysis* (Oxford and New York: Berg, 2008).

Kueny, Kathryn M. *Conceiving Identities: Maternity in Medieval Muslim Discourse and Practice* (New York: State University of New York Press, 2014).

Laird, Martin. *Into the Silent Land: A Guide to the Christian Practice of Contemplation* (Oxford: Oxford University Press, 2006).

Losurdo, Domenico. *Liberalism: A Counter-History* (New York: Verso, 2011).

MacIntyre, Alasdair. *After Virtue: A Study of Moral Theory,* Third Edition (Notre Dame: University of Notre Dame Press, 2007).

Mahmood, Saba. *Politics of Piety: The Islamic Revival and the Feminist Subject* (New Jersey: Princeton University Press, 2005).

___ "Rehearsed Spontaneity and the Conventionality of Ritual: Disciplines of t "Ṣalāt"," in *American Ethnologist* 28, no. 4 (November 2001): 827-853.

___ "Secularism, Hermeneutics, and Empire: The Politics of Islamic Reformation," *Public Culture* 18, no. 2 (2006): 323-347.

Massad, Joseph A. *Islam in Liberalism* (Chicago: University of Chicago Press, 2015).

Mehta, Uday Singh. *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999).

Mir-Hosseini, Ziba. *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton: Princeton University Press, 1999).

Mir-Hosseini, Ziba, Mulki Al-Sharmani and Jana Rumminger, eds. *Men in Charge? Rethinking Authority in Muslim Legal Tradition* (London: Oneworld Publications, 2015).

Mohanty, Chandra Talpade. "Under Western Eyes: Feminist Scholarship and Colonial Discourses" in *On Humanism and the University I* 12, no. 3 (Spring –Autumn 1984): 333-358.

Morrell, Samuel. "An Equal or a Ward: How Independent Is a Married Woman according to Rabbinic Law?" in *Jewish Social Studies* 44, no. 3/4 (Summer-Autumn 1982): 189-210.

Muṭṭaharī, Murtaḍā. *The Rights of Women in Islam*, trans. World Organization for Islamic Services (Tehran: WOFIS, 1418/1998).

Nagar, Richa. "Religion, Race, and the Debate Over Mut'a in Dar Es Salam," *Feminist Studies* 26 no. 3 (2000): 661-691.

Narayan, Kirin. "How Native is a "Native Anthropologist?" in *Feminist Postcolonial Theory*, ed. Reina Lewis and Sara Mills (New York: Routledge, 2003).

Nasr, Seyyed Hossein. "The Heart of the Faithful is the Throne of the All-Merciful," in *Paths to the Heart: Sufism and The Christian East*, ed. James S. Cutsinger (Bloomington: World Wisdom, Inc., 2002).

___ *The Heart of Islam: Enduring Values for Humanity* (New York: HarperCollins, 2004).

Nault, Dom Jean-Charles. *The Noonday Devil: Acedia, the Unnamed Evil of Our* Times (San Francisco: Ignatius Press, 2015).

Ramadan, Tariq. *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009).

Rayner, John D. "From Unilateralism to Reciprocity: A Short History of Jewish Divorce", in *Journal of Progressive Judaism*, no. 11 (November 1998): 47-68.

Reinhart, Kevin. ""Like the Difference between Heaven and Earth:" Ḥanafī and Shāfiʿī Discussions of *Farḍ* and *Wājib* in Theology and Uṣūl," in *Studies in Islamic Legal Theory*, ed. Bernard G. Weiss (Leiden: Brill, 2002).

Riedner, Rachel C. *Writing Neoliberal Values: Rhetorical Connectivities and Globalized Capitalism* (New York: Palgrave MacMillan, 2015).

Rosen, Lawrence. *The Anthropology of Justice: Law as a Culture in Islamic Society* (Cambridge: Cambridge University Press, 1989).

Rothenberg, Celia E. *Spirits of Palestine: Gender, Society and Stories of the Jinn* (Lanham: Lexington Books, 2004).

Sadeghi, Behnam. *The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition* (Cambridge: Cambridge University Press, 2013).

Semerdjian, Elyse. *"Off the Straight Path": Illicit Sex, Law and Community in Ottoman Aleppo* (Syracuse: Syracuse University Press, 2008).

Shah-Kazemi, Reza. "The Metaphysics of Interfaith Dialogue," in *Paths to the Heart: Sufism and The Christian East*, ed. James S. Cutsinger (Bloomington: World Wisdom, Inc., 2002).

Shaikh, Nermeen. *The Present As History: Critical Perspectives on Global Power* (New York: Columbia University Press, 2008).

Sophrony (Sakharov), Archimandrite *Saint Silouan the Athonite*, trans. Rosemary Edmonds (New York: St Vladimir's Seminary Press, 1991).

Spectorsky, Susan. *Women in Classical Islamic Law* (Leiden: Brill, 2010).

Spivak, Gayatri C. "Can the subaltern speak?" in *Marxism and the Interpretation of Culture,* ed. C Nelson and L. Grossberg (Champaign: University of Illinois Press, 1998), 271-316.

Tabrizi, Taymaz. "Ritual Purity and Buddhists in Modern Twelver Shi'a Exegesis and Law," *Journal of Shi'a Islamic Studies* 5, no. 4 (Autumn 2012): 455-471.

Taylor, Charles. *The Malaise of Modernity* (Toronto: House of Anansi Press, 1991).

___ *A Secular Age* (Cambridge: The Belknap Press of Harvard University Press, 2007).

___ *Sources of the Self: The Making of Modern Identity* (Cambridge: Cambridge University Press, 2006).

Trivers, Robert. *Natural Selection and Social Theory: Selected Papers of Robert Trivers (Evolution and Cognition)* (Oxford: Oxford University Press, 2002).

Tucker, *In The House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley and Los Angeles: University of California Press, 2000).

Tucker, Judith E. *Women, Family, and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008).

Turner, Bryan S. "Introduction: The Price of Piety" in *Contemporary Islam* 2, no. 1 (2008): 1-7.

Vasmaghi, Sedigheh. *Women, Jurisprudence, Islam*, trans. Ashna and Philip G. Kreyenbrock (Wiesbaden: Harrassowitz Verlag, 2014).

Wadud, Amina. *Inside the Gender Jihad: Women's Reform in Islam* (Oxford: Oneworld Publications, 2006).

___*Qur'an and Women: Rereading the Sacred Text from a Woman's Perspective* (New York, Oxford University Press, 1999).

Walbridge, Linda S. "Sex and the Single Shi'ite: Mut'a Marriage in an American Lebanese Shi'ite Community," *Family and Gender Among American Muslims: Issues Facing Middle Eastern Immigrants and Their Descendants*, ed. Barbara C. Aswad and Barbara Bildge (Philadelphia: Temple University Press, 1996).

Yanagisako, Sylvia and Carol Delaney (editors), *Naturalizing Power: Essays in Feminist Cultural Analysis* (New York: Routledge, 1995).

Yousefi Eshkavari, Hassan. "Rethinking Men's Authority Over Women: Qiwāma, Wilāya and their Underlying Assumptions," in *Gender and Equality in Muslim Family Law*, ed. Ziba Mir-Hosseini, Kari Vogt, Lena Larsen and Christian Moe (London and New York: I.B Tauris, 2013).

Zakariyah, Luqman. *Legal Maxims in Islamic Criminal Law: Theory and* Applications (Leiden: Brill, 2015).


**Arabic/Persian Sources**

Ibn Abī al-Ḥadīd, ʿAbd al-Ḥamīd b. Hibbat Allāh. *Sharḥ Nahj al-Balāghah*, 10 vols., ed. Muḥammad Abū al-Faḍl Ibrāhīm (Qum: Maktabat Āyat Allāh al-Marʿashī al-Najafī, 1404/1983).

Ibn Abī Fāris, Warrām. *Majmūʿat Warrām*, 2 vols. (Qum: Maktabah-yi Faqīh, 1410/[1989/1990]).

Ibn Abī Jumhūr, Muḥammad b. Zayn al-Dīn. *ʿAwālī al-Laʾālī al-ʿAzīzīyah fī al-Aḥādīth al-Dīnīyah*, 4 vols., Mujtabā ʿIrāqī (Qum: Dār Sayyid al-Shuhadāʾ lil-Nashr, 1405/[1984-1985]).

Āl Shubar, ʿAbd Allāh b. Muḥammad Riḍā. *Al-Jawhar al-Thamīn fī Tafsīr al-Kitāb al-Mubīn*, 6 vols. (Kuwait: Maktabat al-Alfayn, 1407/[1986-1987].

al-ʿĀmilī (al-Shahīd al-Awwal), Muḥammad b. Makkī. *Ghāyat al-Murād fī Sharḥ Nukat al-Irshād*, 4 vols., ed. Riḍā Mukhtārī (Qum: Intishārāt-i Daftar-i Tablīghāt-i Islamī, 1414/1993).

___*Al-Lumʿah al-Dimashqīyah fī Fiqh al-Imāmīyah*, ed. Muḥammad Taqī Murwārīd and ʿAlī Asghar Murwārīd (Beirut: Dār al-Turāth/al-Dār al-Islāmiyah, 1410/1989).

al-ʿĀmilī al-Nabāṭī, ʿAlī b. Muḥammad b. ʿAlī b. Muḥammad b. Yūnus. *Al-Ṣirāṭ al-Mustaqīm ilā Mustaḥiqqī* al-Qadīm, 3 vols., ed. Ramaḍān Mikhāʾīl (Najaf: Maktabat al-Ḥaydarīyah, 1384/[1964-1965]).

al-ʿĀmilī, Muḥammad b. ʿAlī al-Mūsawī. *Nihāyat al-Marām fī Sharḥ Mukhtaṣar Sharāʾi al-Islām*, Muʾassasat al-Nashr al-Islāmī, 2 vols. (Qum: n.p, 1412/1992).

al-ʿĀmilī (al-Shahīd al-Thānī), Zayn al-Dīn ibn ʿAlī), *Masālik al-Ifhām ilā Tanqīḥ Sharāʾiʿ al-Islām*, 15 vols., ed. Gurūh-i Pazhūhish-i Muʾassasah-yi Maʿārif-i Islāmī (Qum: Muʾassasat al-Maʿārif al-Islāmīyah, 1413/[1992-1993]).

\_\_\_*Munyat al-Murīd fī Ādāb al-Mufīd wa al-Mustafīd*, ed. Riḍā Mukhtārī (Qum: Maktabat al-ʿIlām al-Islāmī, 1409/[1988-1989]).

\_\_\_*Rawḍah al-Bahīyah fī Sharḥ al-Lumʿah al-Dimashqīyah*, 10 vols., ed. Muḥammad Kalantar (Qum: Kitābfurūshī-i Dāvarī, 1410/1989).

Ansārīyān, Husayn. *Tafsīr-i Ḥakīm*, 9 vols. (Qum: Dār al-ʿIrfān, n.d).

al-ʿArūsī al-Ḥuwayzī, ʿAbd ʿAlī b. Jumʿah. *Tafsīr Nūr al-Thaqalayn,* 5 vols., ed. Hāshim Rasūlī Maḥlātī (Qum: Ismāʿīlīyān, 1415/1995).

al-Ardabīlī, Aḥmad b. Muḥammad. *Majmaʿ al-Fāʾidah wa al-Burhān fī Sharḥ Irshād al-ʾAdhhān* (Qum: Daftar-i Intishārāt-i Islāmī, 1430/2009).

\_\_\_*Zubdat al-Bayān fī Aḥkām al-Qurʾān*, ed. Muḥammad Bāqir Bihbūdī (Tehran: al-Maktabat al-Jaʿfarīyah li-Iḥyāʾ al-Āthār al-Jaʿfarīyah, n.d).

al-Ashʿath, Muḥammad b. Muḥammad. *Al-Jaʿfarīyāt* (attrib.) (Tehran: Maktabat al-Nīnawa al-Ḥadīthah, n.d).

al-Baḥrānī, Hāshim b. Sulaymān. *Al-Burhān fī Tafsīr al-Qurʾān*, 5 vols., ed. Muʾassasat al-Biʿthah (Qum: Muʾassasat al-Biʿthah, 1374 H.Sh/[1995-1996]).

al-Baḥrānī, Ḥusayn. *Al-ʿAnwār al-Lawāmiʿ fī Sharḥ Mafātīḥ al-Sharīʿah,* 6 vols., ed. Muḥsin Āl ʿAṣfūr (Qum: Majmaʿ al-Buḥūth al-ʿIlmīyah, n.d).

al-Baḥrānī, Yūsuf b. Aḥmad b. Ibrāhīm. *Ḥadāʾiq al-Nāḍirah*, 25 vols., ed. Muḥammad Taqī Irawānī and ʿAbd al-Razzāq Muqrim (Qum: Daftar-i Intishārāt-i Islāmī, 1405/[1984-1985]).

al-Barqī, Aḥmad b. Muḥammad b. Khālid. *Kitāb al-Maḥāsin*, 2 vols., ed. Jalāl al-Dīn Muḥaddith (Qum: Dār al-Kutub al-Islāmīyah, 1371/[1953]).

Ibn al-Barrāj al-Ṭarablusī, ʿAbd al-ʿAzīz al-Qāḍī. *al-Muhadhdhab*, 2 vols., Jamʿi az muḥaqqiqīn va muṣaḥiḥīn taḥt-i ishrāf-i Shaykh Jaʿfar-i Subḥānī (Qum: Daftar-i Intishārāt-i Islāmī, 1406/1986).

Ibn Saʿd, Muḥammad. *Al-Ṭabaqāt al-Kubrā*, 8 vols. (Beirut: Dār Ṣādir, n.d).

Al-Baṣrī al-Baḥrānī, Zayn al-Dīn. *Kalimat al-Taqwā*, 7 vols. (Qum: Sayyid Jawād Widāʿī, 1413/1993).

al-Bukhārī al-Juʿfī, Muḥammad b. Ismāʾil. *Saḥīḥ al-Bukhārī*, 7 vols., ed. Muṣṭafā Dīb al-Bughā (Damascus and Beirut: Dār ibn Kathīr).

al-Dulaymī, Ḥasan b. Muḥammad. *ʾAlām al-Dīn fī Ṣifāt al-Muʾminīn*, ed. Muʿassasat Āl al-Bayt (Qum: Muʿassasat Āl al-Bayt, 1408/1988).

___*Irshād al-Qulūb ilā al-Ṣawāb*, 2 vols. (Qum: al-Sharīf al-Rāḍī, 1412/[1991-1992]).

Fāḍil al-Ābī, Ḥasan b. Abī Ṭālib al-Yūsuf. *Kashf al-Rumūz fī Sharḥ Mukhtaṣar al-Nāfiʿ,* 2 vols., ed. ʿAlī Panāh Ishtihārdī and Aghā Ḥusayn Yazdī (Qum: Daftar-i Instishārāt-i Islāmī, 1417/1996).

___*Kashf al-Rumūz fī Sharḥ Mukhtaṣar al-Nāfi,* 2 vols., ed. ʿAlī Panāh Ishtihārdī and Āqā Ḥusayn Yazdī (Qum: Daftar-i Intishārāt-i Islāmī, 1417/1997).

Faḍl Allāh, Muḥammad Ḥusayn. *Tafsīr Min Waḥī al-Qurʾān*, 24 vols. (Beirut: Dār al-Malāk lil-Ṭabāʿah wa al-Nashr, 1419/[1998-1999]).

al-Faqʿānī, ʿAlī b. ʿAlī b. Muḥammad b. Ṭayy. *Al-Durr al-Manḍud*, ed. Muḥammad Barakat (Qum: Maktabah Imām al-ʿAṣr al-ʿIlmīyah, 1418/1997).

al-Fayḍ al-Kāshānī, *al-Wāfī*, 26 vols. (Iṣfahān: Kitābkhānah-yi Imām Amīr al-Mu'minīn, 1406/1986).

al-Fayḍ al-Kāshānī, *Mafātīh al-Sharāʾi*, 3 vols. (Qum: Kitābkhānah-yi Āyāt Allāh Marʿashī Najafī, n.d).

al-Fayyāḍ al-Kābulī, Muḥammad Isḥāq. *Minhāj al-Ṣāliḥīn*, 3 vols. (n.p, n.d).

al-Gulbāygānī, Muḥammad Riḍā. *Hidāyat al-ʿUbbād*, 2 vols., ed. ʿAlī Thābitī Hamadānī and ʿAlī Hamadānī (Qum: Dār al-Qur'ān al-Karīm 1413/1993).

al-Ḥāʾirī al-Ṭabāṭabāʾī, ʿAlī b. Muḥammad. *Rīyāḍ al-Masāʾil fī Taḥqīq al-Aḥkām bi-al Dalāʾil*, 16 vols., ed. Muḥammad Bahrihmand, Muḥsin Qadīrī, Karīm Anṣārī and ʿAlī Murwārīd (Qum: Mu'assasaah-yi Āl al-Bayt, 1418/1997).

___*al-Sharḥ al-Ṣaghīr fī Sharḥ Mukhtaṣar al-Nāfiʿ*, 3 vols., ed. Mahdī Rajāʾī (Qum: Intishārāt-i Kitāb-khānah-yi Āyat Allāh Marʿashī Najafī, 1409/[1988-1989]).

al-Ḥalabī, Taqī al-Dīn Abū Ṣalāḥ. *al-Kāfī fī al-Fiqh,* ed. Riḍā Ustādī (Isfahān: Kitābkhānah-yi ʿUmūmī-i Amīr al-Mu'minīn, 1403/[1982-1983]).

al-Ḥalabī, ʿIzz al-Dīn Ḥamzah b. ʿAlī Ibn Zuhrah. *Ghunyat al-Nuzūʿ ilā ʿIlmay al-Uṣūl wa-al-Furūʿ*, (Qum: Mu'assasah-yi Imām-i Ṣādiq, 1417/1996).

al-Ḥarrānī, Ḥasan b. ʿAlī. *Tuḥaf al-ʿUqūl*, ed. ʿAlī Akbar Ghaffārī (Qum: Jāmiʿ-yi Mudarrisīn, 1404/1983).

al-Ḥāʾirī al-Tihrānī, Mīr Sayyid ʿAlī. *Muqtanīyāt al-Durar*, 12 vols. (Tehran: Dār al-Kutub al-Islāmīyah, 1377 H.Sh/[1998-1999]).

al-Ḥillī (Al-Muḥaqqiq al-Ḥillī), Jaʿfar b. al-Ḥasan b. Yaḥyā. *Mukhtaṣar al-Nāfiʿ fī Fiqh al-Imāmīyah*, 2 vols. (Qum: Mu'assasat al-Maṭbūʿāt al-Dīnīyah, 1418/1997).

___*Sharāʾiʿ al-Islām fī Masāʾil al-Ḥalāl wa al-Ḥarām*, 4 vols., ed. ʿAbd al-Ḥusayn Muḥammad ʿAlī (Qum: Mu'assasah-yi Ismāʿīlīyān, 1408/1988).

al-Ḥillī (ʿAllāmah al-Ḥillī), Ḥasan b. Yusūf b. Muṭṭahar. *Kashf al-Murād fī Sharḥ Tajrīd al-ʿItiqād* (Mashhad: n.p, n.d).

___*Mukhtalaf al-Shīʿah fī Aḥkām al-Sharīʿah*, 9 vols., Guruh-i Pazhūhishī-i Daftar-i Intishārāt-i Islāmī (Qum: Daftar-i Intishārāt-i Islāmī, 1413/1993).

___*Qawāʿid al-Aḥkām fī Maʿrifat al-Ḥalāl wa-al-Harām*, 3 vols., ed. Gurūh-i Pazhūhish-i Daftar-i Intishārāt-i Islāmī (Qum: Daftar-i Intishārāt-i Islāmī, 1413/[1992-1993]).

___*Tadhkirat al-Fuqahā'* (Qum: n.d, n.p).

___*Taḥrīr al-Aḥkām al-Sharīʿah ʿalā Madhhab al-Imāmīyah*, 6 vol., ed. Ibrāhīm Bahādurī (Qum: Mu'assasah-yi Imām-i Ṣādiq, 1420/[1999-2000]).

___*Talkhīṣ al-Marām fī Maʿrifat al-Aḥkām*, ed. Hādī Qubaysī (Qum: Intishārāt-i Daftar-i Tablīghāt-i Islāmī-i Ḥawzah-yi Qum, 1421/[2000-2001].

al-Ḥillī, Ḥusayn. *Al-Buḥūth al-Fiqhīyah*, ed. Sayyid ʿAlī Baḥr al-ʿUlūm (Beirut: Mu'assasat al-Manār, 1415/1994).

al-Ḥillī, Jamāl al-Dīn b. Aḥmad b. Muḥammad. *Al-Muhadhdhab al-Bāriʿ fī Sharḥ Mukhtaṣar al-Nāfiʿ*, 5 vols., ed. Mujtaba ʿArāqī (Qum: Daftar-i Intishārāt-i Islāmī, 1407/1986).

al-Ḥillī (Fakhr al- Muḥaqiqqīn), Muḥammad b. Ḥasan b. Yūsuf. *Īḍāḥ al-Fawā'id fī Sharḥ Mushkilāt al-Qawāʿid*, 4 vols., ed. Sayyid Ḥusayn Mūsavī Kirmānī and ʿAlī Panāh Ishtihārī (Qum: Mu'assasah-yi Ismāʿīlīān, 1387/1967).

al-Ḥillī, Muḥammad b. Manṣūr b. Aḥmad b. Idrīs. *Al-Sarāʾir al-Ḥāwī li-Taḥrīr al-Fatāwā*, 3 vols. (Qum: Daftar-i Intishārāt-i Islāmī, 1410/1989).

al-Ḥillī, Shams al-Dīn Muḥammad. *Maʿālim al-Dīn fī Fiqh Āl Yāsīn: Dawrah Fiqhīyah Kāmilah ʿalā Wifq Madhhab al-Imāmīyah*, 2 vols., ed. Ibrāhīm Bahādurī (Qum: Mu'assasah-yi Imām-i Ṣādiq, 1424/2003).

al-Ḥurr al-ʿĀmilī, Muḥammad b. Ḥasan. *Tafṣīl Wasā'il al-Shīʿah ilā Taḥṣīl Masā'il al-Sharīʿah*, 30 vols., ed. Mu'assasat Āl al-Bayt (Qum: Mu'assasat Āl al-Bayt, 1409/[1988-1989]).

al-Irawānī, Bāqir. *Durūs Tamhīdīyah fī al-Fiqh al-Istidlālī ʿalá al-Madhhab al-Jaʿfarīyah,* 3 vols. (Qum: Mu'assasat al-Fiqh, 1426/2005*).*

al-Iṣfahānī (al-Majlisī al-Awwal), Muḥammad. *Rawḍat al-Muttaqīn fī Sharḥ Man Lā Yaḥḍuruhu al-Faqīh*, 14 vols., ed. Ḥusayn Mūsawī Kirmānī, ʿAlī Panāh Ishtihārdī, Faḍl Allāh Ṭabāṭabāʾī (Qum: Mu'assasah-yi Farhang-i Islāmī-i Kūshānbūr, 1406/1986).

al-Iṣfahānī, Abū al-Ḥasan. *Wasīlat al-Nijāt*, commentary by Rūḥ Allāh Khumaynī (Qum: Mu'assasah-yi Tanẓīm wa Nashr-I Āthār-i Imām Khumaynī, 1422/[2001-2002]).

al-Iṣfahānī, Bahā' al-Din Muḥammad b. Tāj al-Dīn Ḥasan. *Kashf al-Lithām wa al-Ibhām ʿan Qawāʿid al-Aḥkām*, 11 vols., ed. Gurūh-i Pazhūhish-i Daftar-i Intishārāt- i Islāmī (Qum: Daftar-i Intishārāt-i Islāmī, 1416/1995).

Jawādī Āmulī, ʿAbd Allāh. *Tasnīm: Tafsīr- Qur'ān-i Karīm*, 18 vols., ed. Ḥusayn Ashrāfī and Rūḥ Allāh Rizqī (Qum: Markaz-i Nashr-i Isrā', 1388 H.Sh/[2009-2010]).

al-Jazīrī, ʿAbd al-Raḥmān and Muḥammad Yāsir Māziḥ. *Al-Fiqh ʿalā al-Madhhab al-Arbaʿah wa Madhhab Ahl al-Bayt Waqfan li-Madhhab Ahl al-Bayt*, 5 vols. (Beirut: Dār al-Thaqalayn, 1419/[1998-1999]).

al-Judayʿ, ʿAbd Allāh ibn Yūsuf. *Islām Aḥad al-Zawjayn wa-Madā Ta'thīrihi ʿalā ʿAqd al-Nikāḥ: dirāsah fiqhīyah mufaṣṣalah fī ḍaw' nuṣūṣ al-Kitāb wa al-Sunnah* (Leeds: Al Juday Research & Consultations, 2004).

al-Karājakī, Muḥammad b. ʿAlī. *Kanz al-Fawā'id*, 2 vols., ed. ʿAbd Allāh Niʿmah (Qum: Dār al-Dhakhāʾir, 1410/1989).

al-Karakī (al-Muḥaqqiq al-Thānī), ʿAlī b. Ḥusayn. *Jāmiʿ al-Maqāṣid fī Sharḥ al-Qawāʿid*, 13 vols., ed. Gurūh-i Pazhūhish-i Mu'assasah-yi Āl al-Bayt (Qum: Mu'assasah-yi Āl al-Bayt, 1414/1993).

al-Kāshānī (al-Fayḍ al-Kāshānī), Muḥammad Muḥsin b. Murtaḍā. *Tafsīr al-Ṣāfī*, 5 vols., ed. Ḥusayn Aʿlamī (Tehran: Maktabat al-Ṣadr, 1415/1995).

al-Kāshānī, Fatḥ Allāh b. Shukr Allāh. *Zubdat al-Tafāsīr*, 7 vols., ed. Bunyād-i Maʿārif-i Islāmī (Qum: Bunyād-i Maʿārif-i Islāmī, 1423/2002).

al-Kāshānī, Mullā Ḥabīb Āllāh Sharīf. *Tashīl al-Masālik ilā al-Madārik fī Ru'ūs al-Qawaʿid al-Fiqhīyah*,(Qum: al-Maṭbaʿah al-ʿIlmīyah, 1404/1993).

al-Kaydarī, Muḥammad b. Quṭb al-Dīn. *Iṣbāḥ al-Shīʿah bi-Miṣbāḥ al-Sharīʿah*, ed. Ibrāhīm Bahādurī Marāghī (Qum: Mu'assasah-yi Imām-i Ṣādiq, 1416/1996).

al-Khū'ī, Abū al-Qāsim al-Mūsawī. *Mawsūʿat al-Imām al-Khū'ī*, 33 vols., ed. Pazhūhishgarān-i Mūassasah-yi Iḥyā'-i Āthār-i Ayat Allāh al-ʿUẓmā Khū'ī (Qum: Pazhūhishgarān-i Mūassasah-yi Iḥyā'-i Āthār-I Ayat Allāh al-ʿUẓmā Khū'ī, 1418/1997).

___*Minḥāj al-Ṣaliḥīn*, 2 vols. (Qum: Madīnat al-ʿIlm, 1410/1989).

___*Takmilat al-Minḥāj* (Qum: Madīnat al-ʿIlm, 1410/1989).

Al-Khumaynī, Ruḥ Allāh. *Istiftā'āt*, 3 vols (Qum: Daftar-i Intishārāt-i Islāmī, 1422/[2001-2002].

___*Kitāb al-Ṭahārah*, 4 vols. (Qum: Mu'assasah-yi Tanẓīm va Nashr-i Āthār-i Imām Khumaynī, nd).

___*Taḥrīr al-Wasīlah*, 2 vols. (Qum: Mu'assasah-yi Maṭbūʿāt-i Dār al-ʿIlm, n.d.)

___*Tawḍīh al-Masā'il*, 2 vols., ed. Muḥammad Ḥusayn Banī Hāshimī Khumaynī (Qum: Daftar-i Intishārāt-i Islāmī, 1424/2003).

___*Zubdat al-Aḥkām* (Tehran: Sāzmān-i Tablīghāt-i Islāmī, 1404/1983).

al-Khurāsānī, Ḥusayn al-Waḥīd. *Minḥāj al-Ṣāliḥīn*, 3 vols. (Qum: Madrasah-yi Imām-i Bāqir, 1428/2007).

___*Tawḍīḥ al-Masā'il* (Qum: Madrasah-yi Imām-i Bāqir, 1428/2007).

al-Kulaynī, Muḥammad b. Yaʿqūb b. Isḥāq. *Al-Kāfī,* 15 vols., ed. Dār al-Ḥadīth/Mūsā Shubayrī Zanjānī (Qum: Dār al-Ḥadīth, 1429/2008).

al-Khwānsārī, Aḥmad. *Jāmiʿ al- Madārik fī Sharḥ Mukhtaṣar al-Nāfiʿ*, 7 vols., ed. ʿAlī Akbar Ghaffārī (Qum: Mu'assasah-yi Ismāʿīlīyān, 1405/1984).

al-Lankarānī, Muḥammad Fāḍil. *Al-Aḥkām al-Wāḍiḥah* (Qum: Markaz-i Fiqhī-i Aʾimmah-yi Aṭhār, 1422/[2001-2002]).

___*Risālah-yi Tawḍīh al-Masā'il* (Qum: n.p, 1426/2005).

___*Al-Ṭalāq, al-Mawārīth: Tafṣīl al-Sharīʿah fī sharḥ Taḥrīr al-Wasīlah*, ed. Ḥusayn Wāthiqī (Qum: Markaz-i Fiqhī-i A'immah-yi Aṭhār, 1421/2000).

___*Tafṣīl al-Sharīʿah fī Sharḥ Taḥrīr al-Wasīlah (al-Nikāh),* Ḥusayn Wāthiqī (Qum: Markaz-i Fiqhī-i A'immah-yi Aṭhār, 1421/[2000-2001]).

Madanī Kāshānī, Riḍā. *Kitāb al-Dīyāt* (Qum: Daftar-i Intishārāt-i Islāmī, 1408/1988).

al-Majlisī, Muḥammad Bāqir b. Muḥammad Taqī. *Biḥār al-Anwār al-Jāmiʿah li-durar Akhbār al-A'immah al-Aṭhār*, 110 vols., ed. by a committee of researchers (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1403/1982).

Al-Majlisī, *Mirāt al-ʿUqūl fī Sharḥ Akhbār al-Rasūl*, 26 vols., ed. Hāshim Rasūlī Maḥlātī (Tehran: Dār al-Kutub al-Islāmīyah, 1404/1983).

Makārim Shīrāzī, Nāṣir. *Istiftā'āt-i Jadīd*, 3 vols., ed. Abū al-Qāsim ʿAlīyān-nizhādī (Qum: Intishārāt-i Madrasah-yi Imām ʿAlī b. Abī Ṭālib, 1427/2006).

___*Kitāb al-Nikāḥ*, 6 vols., ed. Muḥammad Riḍā Ḥāmidī and Masʿūd Makārim (Qum: Intishārāt-i Madrasah-yi Imām ʿAlī b. Abī Ṭālib, 1424/2003).

___*Tafsīr-i Nimūnah*, 27 vols. (Tehran: Dār al-Kutub al-Islāmīyah, 1374 H.Sh/[1995-1996]).

al-Mashhadī, ʿImād al-Dīn Muḥammad b. ʿAlī b. Ḥamzah. *Wasīlah ilā Nayl al-Faḍīlah*, ed. Muḥammad Ḥassūn (Qum: Maktabat Āyat Āllāh al-Marʿashī al-Najafī, 1408/1987).

al-Māzandarānī, Muḥammad Ismāʿīl b. Muḥammad Ḥusayn. *Al-Rasā'il al-Fiqhīyah*, 2 vols., ed. Sayyid Mahdī Rajā'ī (Qum: Dār al-Kitāb al- Islāmī, 1411/1990).

al-Māzandarānī, Muḥammad b. ʿAlī b. Shahr-Āshūb. *Manāqib Āl Abī Ṭālib*, 4 vols. (Qum: ʿAllāmah, 1379/[1959-1960]).

al-Mudarrisī, Muḥammad Taqī. *Min Hudā al-Qurʾān*, 18 vols. (Tehran: Dār Maḥabbā al-Ḥusayn, 1419/[1998-1999]).

al-Mughnīyah, *Muḥammad Jawād. Al-Fiqh ʿalā al-Madhāhib al-Khamsah*, 2 vols. (Beirut: Dār al- Tayyār al-Jadīd: 1429/2008).

___*Fiqh al-Imām al-Ṣādiq*, 6 vols. (Qum: Mu'assasah -yi Anṣārīyān, 1421/2000).

al-Muḥsinī, Muḥammad Āṣif. *Al-Fiqh wa Masā'il Ṭibbīyah*, 2 vols. (Qum: Intishārāt-i Daftar-i Tablīghāt-i Islāmī, 1424/2003).

al-Muntaẓirī, Ḥusayn ʿAlī. *Kitāb al-Ḥudūd* (Qum: Intishārāt-i Dār al-Fikr, n.d).

___*Risālah-yi Istiftā'āt*, 3 vols. (Qum: np: nd).

al-Muẓaffar, Muḥammad Riḍā. *Uṣūl al-Fiqh*, 2 vols. (Qum: Mu'assasat al-Nashr al-Islāmī, 1430/2009).

al-Najafī al-Khwānsārī, Mūsa b. Muḥammad. *Risālah fī Qāʿidat Nafī al-Ḍarar* (Tehran: al-Maktabat al- Muḥammadīyah, 1373/1953).

al-Najafī, Muḥammad Ḥasan b. Bāqir. *Jawāhir al-Kalām fī Sharḥ Sharāʾiʿ al-Islām*, 43 vols., ed. ʿAbbās Quchānī and ʿAlī Ākhundī (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d).

Najm Ābādī, Abū Faḍl. *al-Uṣūl*, 3 vols. (Qum: Muʾassasat Āyat Allāh alʿUẓmā al-Burūjirdī li-Nashr Maʿālim Ahl al-Bayt, 1380 H.Sh/2001).

al-Nishābūrī, Muḥammad b. Aḥmad al-Fattāl. *Rawḍah al-Wāʿiẓīn*, 2 vols. (Qum: Intishārāt-i Raḍī, 1375 H.Sh/1996).

al-Nīshābūrī, Muslim b. al-Ḥajjāj, *Ṣaḥīḥ Muslim*, 5 vols., ed. Muḥammad Fuʾād al-Bāqī (Beirut: Dār ʾIḥyā al-Kutub al-ʿArabī, 1412/1991).

al-Nūrī, Mírzā Ḥusayn. *Mustadrak al-Wasāʾil wa Mustanbaṭ al-Masāʾil*, 18 vols., ed. Gurūh-i Pazhūhish-i Muʾassasah-yi Āl al-Bayt (Beirut: Muʾassasat Āl al-Bayt, 1408/1987).

Pāyandah, Abū al-Qāsim. *Nahj al-Faṣāḥah* (Tehran: Dunyā-yi Dānish, [2003-2004]).

al-Qummī al-Mashhadī, Muḥammad b. Muḥammad Riḍā. *Tafsīr Kanz al-Daqāʾiq wa Baḥr al-Gharāʿib*, 14 vols., ed. Ḥusayn Dargāhī (Tehran: Sāzmān-i Chāp va Intishārāt-i Vizārat-i Farhang va Irshād-i Islāmī, 1368 H.Sh/1989).

al-Qummī al-Sabzawarī, ʿAlī Muʾmin. *Jāmiʿ al-Khilāf wa-al-Wifāq*, ed. Ḥusayn Ḥasanī Bīrjandī (Qum: Zamīnah Sāzān-i Ẓuhūr-i Imām-i ʿAṣr, 1421/2000).

al-Qummī, ʿAlī b. Ibrāhīm. *Tafsīr al-Qummī* (attrib), 2 vols., ed. Tayyib al-Mūsawī al-Jazāʾirī (Qum: Dār al-Kitāb, 1404/[1983-1984]).

al-Qurṭubī al-Andalusī, Muḥammad ibn Aḥmad. *Sharḥ Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid: wa-bi-hāmishih al-Sabīl al-murshid ilā Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, 4 vols., ed. ʿAbd Allāh ʿAbādī (al-Azhar [Cairo]: Dār al-Salām, 1995).

al-Rāwandī al-Kāshānī, Faḍl Allāh b. ʿAlī. *Al-Nawādir*, ed. Aḥmad Ṣadiqī Ardistānī (Qum: Dār al-Kutub, nd).

al-Rāwandī, Qutb al-Dīn Saʿīd b. ʿAbd Allah. *al-Kharāʾij wa al-Jarāʾiḥ*, 3 vols. (Qum: Muʾassasah-yi Imām-i Mahdī, 1409/[1988-1989]).

___*Fiqh al-Qurʾān*, 2 vols., ed. Maḥmūd Marʿashī and Aḥmad al-Ḥusaynī (Qum: Maktabat Āyat Allāh al-Marʿashī al-Najafī, 1405/[1984-1985]).

al-Rayshahrī, Muḥammad. *Mīzān al-Ḥikmah*, 12 vols. (Qum: Dār al-Ḥadīth, 1422/[2001-2002]).

al-Riḍā, ʿAlī b. Mūsā (attrib.). *Al-Fiqh al-Mansūb ilā al-Imām al-Riḍā*, ed. Mu'assasat Āl al-Bayt (Mashhad: Mu'assasat Āl al-Bayt, 1406/1986).

al-Rūḥānī, Ṣādiq al-Ḥusaynī. *al-Fiqh al-Ṣādiq*, 26 vols. (np: nd).

al-Sabzawārī, ʿAbd al-ʿAlā *Muhadhdhab al- Aḥkām*, 30 vols., ed. Mu'assasah-yi al-Manār (Qum: Daftar-i Āyat Allāh Sabzawārī, 1413/1993).

al-Sabzawārī al-Najafī, Muḥammad b. Ḥabīb Allāh. *Al-Jadīd fī Tafsīr al-Qurʾān al-Majīd*, 7 vols. (Beirut: Dār al-Taʿāruf lil-Matbūʿāt, 1407/[1986-1987]).

al-Sabzawārī, Muḥammad Bāqir b. Muḥammad Mu'min. *Kifāyat al-Aḥkām*, 2 vols. (Isfahan: Intishārāt-i Mahdavī, nd).

al-Ṣādiq, Jaʿfar b. Muḥammad. *Miṣbāḥ al-Sharīʿah* (attrib.) (Beirut: Aʿlamī, 1400/1980).

al-Ṣādiqī al-Tihrānī, Muḥammad. *al-Furqān fī Tafsīr al-Qurʾān bi al-Qurʾān*, 30 vols. (Qum: Intishārāt-i Farhang-i Islāmī, 1365 H.Sh/1986).

al-Ṣadr, Muḥammad Bāqir. *Buḥūth fī ʿIlm al-Uṣūl*, 7 vols., ed. Maḥmūd Hāshimī Shāhrūdī (Qum: Mu'assasah-yi Dāʾirat al-Maʿārif bar Madhhab-i Ahl al-Bayt, 1417/[1996-1997]).

al-Ṣadūq (al-Shaykh al-Ṣadūq), Muḥammad b. ʿAlī b. Bābūyah. *ʿIlal al-Sharāʾiʿ*, 2 vols. (Qum: Kitābfurūshī-i Dāvarī, 1385 H.Sh/1966).

___*ʿItiqādāt al-Imāmīyah* (Qum: Kungrih-yi Shaykh-i Mufīd, 1414/1993).

___*Al-Khiṣāl*, 2 vols., ed. ʿAlī Akbar Ghaffārī (Qum: Jāmiʿ-yi Mudarrisīn , 1362 H.Sh/1983).

___*Maʿānī al-Akhbār*, ed. ʿAlī Akbar Ghaffārī (Qum: Daftar-i Intishārāt-i Islāmī, 1403/1983).

___*Man Lā Yaḥḍuruhu al-Faqīh*, 4 vols., ed. ʿAlī Akbar Ghaffārī (Qum: Daftar-i Intishārāt-i Islāmī, 1413/1993).

___*al-Muqniʿ* (Qum: Muʿassasat al-Imām al-Mahdī, 1415/1995).

___*al-Tawḥīd*, ed. Hāshim Ḥusaynī (Qum: Jāmiʿyi Mudarrisīn, 1398/[1977-1978]).

___*ʿUyūn Akhbār al-Riḍā*, 2 vols., ed. Mahdī Lājurdī (Tehran: Nashr-i Jahān, 1378/1958).

Ṣāniʿī, Yūsuf. *Bulūgh-i Dukhtarān* (Qum: Maytham-i Tammār, 1385 H.Sh/2006).

___*Fiqh al-Thaqalayn fī Sharḥ Taḥrīr al-Wasīlah: Kitāb al-Ṭalāq* (Tehran: Mu'assasat Tanẓīm wa Nashr Āthār al-Imām al-Khumaynī, 2001).

___*Vujūb-i Ṭalāq-i Khulʿ bar Mard* (Qum: Maytham-i Tammār, 2008).

al-Ṣaymarī, Mufliḥ b. al-Ḥasan Rashīd. *Ghāyat al-Marām fī Sharḥ Sharāʾi al-Islām*, 4 vols., ed. Jaʿfar al- Kawtharānī al-ʿĀmilī (Beirut: Dār al-Hādī, 1420/1999).

Ibn Shahr-Āshūb al-Māzandarānī, *Mutashābihah al-Qurʾān wa Mukhālifatihi*, 2 vols. (Qum: Dār Bīdār lil-Nashr, 1369/[1949-1950]).

al-Sharīf al-Murtaḍā, ʿAlī b. al-Ḥusayn. *Al-Dhakhīrah fī ʿIlm al-Kalām*, ed. Aḥmad Ḥusaynī (Qum: Muʾassasat al-Nashr al-Islāmī, 1411/[1990-1991]).

___*Masāʾil al-Nāṣirīyāt*, ed. Markaz-i Pazhūhish va Taḥqīqāt-i ʿIlmī (Tehran: Rābiṭat al-Thaqāfah wa-al-ʿAlāqāt al-Islāmīyah, 1417/1996).

___*Rasāʾil al-Sharīf al-Murtaḍā*, 4 vols., ed. Mahdī Rajāʾī (Qum: Dār al-Qurʾān al-Karīm, 1405/[1984-1985]).

al-Sharīf al-Rāḍī, Muḥammad b. Ḥusayn. *Nahj al-Balāghah*, ed. Ṣubḥī Ṣāliḥ (Qum: Hijrat, 1414/1993).

al-Shiblī, Muḥammad b. ʿAbd Allāh. *Akām al-Marjān fī Aḥkām al-Jān*, ed. Aḥmad ʿAbd al-Salām (Beirut: Dār al-Kutub al-ʿIlmīyah, nd).

al-Shīrāzī (Mulla Sadra), Muḥammad b. Ibrāhīm Ṣadr al-Dīn. *Sharḥ Uṣūl al-Kāfī*, 4 vols., ed. Muḥammad Khwājavī (Tehran: Muʾassasah-yi Muṭāliʿāt va Taḥqīqāt-i Farhangī, 1383 H.Sh/2004).

al-Shīrāzī, Muḥammad Ḥusaynī. *Min Fiqh al-Zahrāʾ*, 5 vols. (Qum: np, 1428/2007).

al-Shushtarī, Muḥammad Taqī. *al-Najʿah fī Sharḥ al-Lumʿah*, 11 vols. (Tehran: Kitab Furūshī-i Ṣadūq, 1406/1985).

al-Shuʿayrī, Muḥammad b. Muḥammad. *Jāmiʿ al-Akhbār* (Najaf: Maṭbaʿat Ḥaydarīyah, n.d.).

al-Sīstānī, ʿAlī. *Minḥāj al-Ṣāliḥīn*, 3 vols. (n.p, n.d).

al-Subḥānī, Jaʿfar. *Mafāhīm al-Qurʾān*, 10 vols. (Qum: Muʾassasat al-Imām al-Ṣādiq, 1421/[2000-2001]).

___*Niẓām al-Nikāḥ fī al-Sharīʿah al-Islāmī al-Gharrāʾ*, 2 vols (Qum: n.p, n.d).

___*Niẓām al-Ṭalāq fī al-Sharīʿah al-Islāmīyah, ed. Sayf Allāh al-Yaʿqūbī al-Iṣfahānī,* (Qum: Muʾassasat Dār al-Imām al-Ṣādiq, 1414 /1993).

Al-Suyūrī (Fāḍil al-Miqdād), Miqdād b. ʿAbd Allāh. *Kanz al-ʿIrfān fī Fiqh al-Qurʾān*, 2 vols. (Qum: np: nd).

___*Tanqīḥ al-Rāʿī li-Mukhtaṣar al-Sharāʿi* , 4 vols., ed. Sayyid ʿAbd al-Laṭīf Kūhkamarī (Qum: Kitābkhānah-yi Āyat Āllāh Marʿashī Najafī, 1404/1983).

al-Ṭabāṭabāʾī, Muḥammad Ḥusayn. *Al-Mīzān fī Tafsīr al-Qurʾān*, 20 vols. (Qum: Daftar-i Intishārāt-i Islāmī-i Jāmiʿah-yi Mudarrisīn-i Ḥawzah-yi ʿIlmīyah-yi Qum, 1417/1996-1997]).

___*Risālah al-Wilāyah* (Beirut: Dār al-Taʿāruf lil-Maṭbūʿāt, 1987).

al-Ṭabāṭabāʾī al-Ḥakīm, Muḥsin. *Mustamsak al-ʿUrwat al-Wuthqā*, 14 vols. (Qum: Muʾassasat Dār al-Tafsīr, 1416/[1995-1996]).

al-Ṭabāṭabāʾī al-Qummī, Taqī. *Mabānī Minhāj al-Ṣāliḥīn*, 10 vols., ed. ʿAbbās Ḥājīyānī (Qum: Manshūrāt Qalam al-Sharq, 1426/2005).

al-Ṭabrisī, al-Faḍl b. al-Ḥasan. *Majmaʿ al-Bayān fī Tafsīr al-Qurʾān,* 10 vols., ed. Muḥammad Javād Balāghī (Tehran: Intishārāt-i Nāṣir-i Khusraw, 1372 H.Sh/1993).

___*Makārim al-Akhlāq* (Qum: al-Sharīf al-Rāḍī, 1412/[1991-1992]).

___*Mishkāt al-Anwār fī Ghurar al-Akhbār* (Najaf: al-Maktabat al-Ḥaydarīyah, 1385-1965).

___*al-Muʾtalaf min al-Mukhtalaf bayn Aʾimmat al-Salaf*, 2 vols., ed. Mudīr Shānichī and Mahdī Rajāʾī (Mashhad: Majmaʿ al-Buḥūth al-Islāmīyah, 1410/1989).

al-Tabrīzī, Jawād b. ʿAlī. *Asās al-Ḥudūd wa al-Taʿzīrāt* (Qum: Daftar-i Muʾalif, 1417/[1996-1997]).

___*Ṣirāt al-Najāt*, 7 vols. (np: nd).

al-Tamīmī al-Āmidī, ʿAbd al-Wāḥid. *Ghurar al-Ḥikam wa Durar al-Kalim*, ed. Mahdī Rajāʾī (Qum: Dār al-Kitāb al-Islāmī, 1410/[1989-1990]).

Ibn Tāwwūs, ʿAlī b. Mūsā. *Fatḥ al-Abwāb Bayn Dhawī al-Albāb wa Bayn Rabb al-Arbāb*, ed. Ḥāmid Khaffāf (Qum: Muʾassasat Āl al-Bayt, 1409/[1988-1989]).

al-Tirmidhī, Muḥammad b. ʿAlī Ḥakīm. *Bayān al-farq bayn al-ṣadr wa al-qalb wa al-fuʾād wa al-lubb*, ed. Nicholas L. Heer (Cairo: Dār Iḥyāʾ al-Kutub al-ʿArabīyah, 1958).

al-Ṭūsī, Muḥammad b. Ḥasan. *Al-ʾAmālī*, ed. Muʾassasat al-Biʿthah (Qum: Dār al-Thaqāfahh, 1414/1993).

___*Al-Iqtiṣād al-Hādī ilā al-Ṭarīq al-Rashād* (np: Nashr-i Kitābkhānah, 1375/[1955-1956]).

___*al-Istibṣār fī-mā Ikhtalafa min al-Akhbār*, 4 vols., Ḥasan al-Mūsawī al-Khirsān (Tehran: Dār al-Kutub al-Islāmīyah, 1390/1970).

___*Al-Khilāf*, 6 vols., ed. ʿAlī Khurāsānī and Sayyid Jawād Shahristānī (Qum: Daftar-i Intishārāt-i Islāmī, 1407/1986).

___*Al-Mabsūṭ fī Fiqh al-Imāmīyah*, 8 vols., ed. Muḥammad Taqī Kashfī (Tehran: al-Maktabah al-Murtaḍawīyah li-'Iḥyā' al-Āthār al-Jaʿfarīyah, 1387/[1967-1968].

___*Al-Nihāyah fī Mujarrad al-Fiqh wa al-Fatāwā* (Beirut: Dār al-Kutub al-ʿArabī, 1400/[1979-1980]).

___*Tahdhīb al-Aḥkām*, 10 vols., ed. Muḥammad al-Mūsawī Khirsān (Tehran: Dār al-Kutub al-Islāmīyah, 1407/[1986-1987]).

___*Al-Tibyān fī Tafsīr al-Qur'ān,* 10 vols., ed. Aḥmad Qaṣīr al-ʿĀmilī (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d).

al-Wāsiṭī al-Laythī, ʿAlī b. Muḥammad. *ʿUyūn al-Ḥikam wa al-Mawāʿiẓ*, ed. Ḥusayn Bīrjandī (Qum: Dār al-Ḥadīth, 1376 H.Sh/[1997-1998]).

al-Wijdānī-Fakhr, Qudrat Allāh. *Al-Jawāhir al-Fakhrīyah fī Sharḥ al-Rawḍah al-Bahīyah*, 16 vols. (Qum: Intishārāt-i Samāʾ-i Qalam, 1426/2005).

*al-Mawsūʿah al-Fiqhīyah,* [no author or editor named.] (Kuwait: Ṭibāʾat Dhāt al-Salāsil, 1410/1990).

al-Zanjānī, Mūsā Shubayrī. *Kitāb al-Nikāḥ*, 23 vols., ed. Mūassasah-yi Pazhūhish-i Raypardāz (Qum: Mūassasah-yi Pazhūhish-i Raypardāz , 1419/[1998-1999]).

___*Risālah-yi Tawḍīḥ al-Maṣā'il* (Qum: Intishārāt-i Salsabīl, 1430/2009).