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Rethinking Gender: Discussions with Ulama in Iran

Ziba Mir-Hosseini

“Gender” and “Islam” are both huge, vague topics, each addressed in multiple discourses and through widely ranging perspectives. The same is true of their conjunction, “gender in Islam.” Too often this topic is addressed by broad generalizations or platitudes—hot air. To be more precise as to what we are talking about, I suggest three levels at which to discuss “gender in Islam”: (1) interpretations of Islamic texts, as sources of authority and of justification for a particular stand or ideology on women’s rights, gender roles and relations, etc.; (2) the level of local/national political ideologies, rhetorics, and debates, with their local historical particularities; and (3) the level of lived experiences for any given individual or local community, including actual opportunities, power, control of resources and of self, employment, education, gender roles and relations, etc.

Debates about “gender and Islam” tend either to confine themselves to one level and ignore the others, or, more often, when polemics and rhetoric are involved, they follow the common rhetorical tactic (conscious or unconscious) of shifting between levels without acknowledging it, to make what is then a (dishonest/invalid) point. Most common is the device of comparing the ideals/rhetorics of a favored system with practices/experiences in an opposing one.

I also suggest that those of us who research, think, write, and talk about “gender in Islam” need to be clear, both to ourselves and to our audiences, as to where we stand personally on the issues. That is, where we “come from.” Unless we are honest about our own personal, individual motives in playing the game, there will be no movement in the debate. I am not suggesting an individual or collective psychoanalysis but an admission that each of us has a position. I often hear colleagues talking, or read their writings, with a strong feeling that there is a conscious or unconscious hidden agenda. I also know how difficult it is to recognize and talk about one’s often very complex and often contradictory identities and

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positions.

If we are Muslims, whether or not we are believers or practitioners, Islam is part of our identity, our way of life, a culture, a system of values. We may be at ease and feel at home with Islam, or be in a painful and ambiguous relationship. If we are not Muslims, Islam is the “other”. Whoever we are, since the publication of Edward Said’s book, our position inevitably is affected by a healthy scepticism toward Orientalist and media representations of Islam.¹ In these representations, Islam is a unitary phenomenon as no other religion is, incapable of development, self-knowledge or self-reflection, and, above all, it is anti-woman. It is with respect to women that the *shari’*a enters the scene. Its mandates on marriage and gender relations have made it for some time a terrain on which the forces of traditionalism and modernism stage their gendered battles in the Muslim world. With globalization, deterritorialization, and the blurring of Islamic discourses with others, the battle no longer is contained within the Muslim world.

These are complex issues which I have no intention of exploring here, except to point out that sometimes it is not easy to distinguish the personal from the political, what we see from what we want to see, while claiming that we have retained academic impartiality. No meaningful discussion of gender and Islam is possible, I believe, unless we are prepared, first, to make our own positions and projections transparent, and second, to be clear about the level at which we are arguing and to be honest when we shift between levels. Otherwise, we risk being locked in tired old polemics or in essentialisms, and end up offering nothing but clichés, platitudes, and sweeping generalizations.

Gender and Islam: Print Genres

The aforementioned problems still continue to characterize much of the debate about “Islam and gender,” as reflected in the unending flow of “Women in Islam” titles in secular and religious publishing projects, both outside and inside the Muslim world. Leaving aside works written by *outsiders*, among those originating *inside* the Muslim world two genres prevail. First, are studies with a strong religious tone and content, largely written by Muslim men—but more recently women—for believers in their native language. These works are “shari’a-based.”² Their perspectives and arguments range from those of patriarchy to those of gender equality, but their positioning is clear.

The second major genre includes works with a feminist slant, written largely by

1. Edward Said, *Orientalism* (New York: Pantheon Books, 1978).

2. For a discussion of this genre in Arabic and Persian respectively, see Barbara F. Stowasser, “Women’s Issues in Modern Islamic Thought.” Pages 3-28 in *Arab Women: Old Boundaries and New Frontiers*, ed. by Judith Tucker (Bloomington: Indiana University Press, 1993), and Ziba Mir-Hosseini, *Islam and Gender in Iran: Discussions with Ulama* (Princeton: Princeton University Press, forthcoming).

women of Muslim background and culture, who locate their feminism in Islam but often write in English or French, not necessarily for a religious audience. These “feminism-based” writings are by authors as diverse as Nawal Saadawi, Fatima Mernissi, Leila Ahmed, Riffat Hassan, and Azizah Al-Hibri (among others).³ Works in this second genre, while diverse and heterogeneous, generally are considered progressive, while those of the first genre are more uniform in approach and generally are considered reactionary. Despite the fact that writers in both genres take an insider position, there is almost no apparent dialogue between them. It is not just that they speak different languages (both literally and metaphorically), but also they use different modes of argumentation and belong to two different scholarly traditions.

Yet the two genres have a lot in common. Both re-read the sacred texts in search of solutions for a very contemporary problem: How to deal with and respond to Muslim women’s aspirations for full participation and equality. Also, both are highly skilled in shifting between the three levels that I mentioned, in particular when they represent and respond to the arguments put forward by the other side. Recently, although few of those involved are prepared to admit it, there has been a kind of rapprochement, in the sense that writers in the two genres increasingly are coming to follow the same route in their quest. For instance, compare Fatima Mernissi’s *Le Harem Politique*, published in 1987, with her *Beyond the Veil*, published almost a decade earlier.⁴ Not only is her approach different, but the way she frames her argument has changed. Earlier she sought to expose the patriarchal inner logic of Islamic texts. Now she does exactly what writers in the first genre do, that is, she seeks new meanings in the *hadith* literature to throw a new, less patriarchal, light on gender relations in Islam.

The question is why? What happened after the 1970s that brought Mernissi to change her style and argument? I hope that these writers some time will write explicitly about their own trajectories and theorize how and why their own conceptions of “gender in Islam” have changed. It can’t be explained away by external changes. Is it merely a tactical move, in the sense that the end justifies the means? Or is it that their own interpretations and understanding of Islam have changed? It seems clear that, for whatever reasons, some writers of the “feminism-based” genre have moved toward positions taken by some writers of the other genre:

3. For a discussion of this genre, see Margot Badran, “Feminism,” *Oxford Encyclopedia of the Modern Islamic World*, vol. 2 (Oxford: Oxford University Press, 1995), pp. 19-23.

4. Fatima Mernissi, *Le Harem Politique* (Paris: Albin Michel, 1987); transl. by Mary Jo Lakeland, as *Women and Islam: An Historical and Theological Enquiry* (Oxford: Blackwell, 1991); also published as *The Veil and Muslim Male Elite* (Reading: Addison-Wesley, 1991). Fatima Mernissi, *Beyond the Veil: Male-Female Dynamics in Muslim Society* (Cambridge, Mass.: Schenken, 1978).

they at least are prepared to listen to them, to take them seriously, and to borrow something of their arguments and approaches.

At the same time, the “shari‘a-based” writers are making similar, reciprocal movements in the other direction. The reasons are clear. One neglected and paradoxical outcome of the rise of political Islam in the 1970s has been to help create a space, an arena, within which Muslim women can reconcile their faith with their “feminism.” This has been happening at all three levels: interpretation, political rhetoric, and personal experiences. Thus we have the emergence, now widely debated, of an Islamic feminism.

Personal Premises and Argument

First, I understand “feminism” in its broadest sense, that is, as a broad concern with women’s issues; an awareness that women suffer discrimination at work, in the home, and in society because of their gender; and action taken to change this situation and improve women’s lives. Second, I start from the premise that gender roles and relations, and women’s rights, are not fixed, not given, not absolute. They are negotiated and changing cultural constructs, produced in response to lived realities, through debates that now are going on all over the Muslim world, through the voices of women and men who want either to retain or to change the status quo. They exist in and through the ways in which we talk about them, both publicly and privately, study them and write about them. Not just the literature, but also conferences and seminars, help to shape and supply the sources for discussions of what gender relations and women’s rights are and can be in Islam, like the plethora of studies on women in Islam, or women in Iran.

Finally, I argue that feminist readings of the shari‘a become possible, and even inevitable, when Islam is no longer an oppositional discourse in national politics. This is so because once the shari‘a is in power, its custodians have to deal with contradictions between its agenda and its discourse. They must uphold the family and restore women to their “true and high” status in Islam and, at the same time, retain the patriarchal mandates of the shari‘a legal rulings. The resulting tension is inherent in the practice of the shari‘a itself, but it is intensified by its close identification with the modern nation-state, which, unlike its predecessors, is able to make law. This tension opens room for novel interpretations, on a scale that has no precedent in Islamic history.

A case in point is Iran, where one version of the Islamist vision has been realized. Now, twenty years into an Islamic Republic, there are clear signs of the emergence of feminist re-readings of the shari‘a texts. This is manifest in two currents. The first reflects a shift in the official discourse of the Islamic Republic, evident in a number of recent laws, some of which amount, in effect, to reversals of the early decisions of the revolutionary regime. They include the removal of earlier bans on women studying topics such as mining and agriculture and serving as judges. The most conspicuous reversal is perhaps the 1992 “Amendments to

Divorce Regulations.” These amendments represent a radical interpretation of shari’a divorce provisions. They not only curtail men’s right to repudiation (*talaq*) but place a monetary value on women’s housework and entitle them to *ujrat al-mithl*, “domestic wages” for the work they have done during marriage.⁵

The second current, the focus of this article, reflects an internal tension and debate among the clerics in Qom, the centre of clerical power in Iran. It is here that one can detect the development of a new discourse on women, which is very much rooted in shari’a law, yet is “feminist” in both tone and inclination. To understand this discourse, we first need to shift our focus from the ways in which shari’a rulings are oppressive to women to the ways in which women find their embedded contradictions empowering. Second, we need to contextualize and sometimes to decode what is being said in this discourse. It is not enough to examine what is said; one also must know who is saying it, and what their intentions and background are. In other words, one needs to read between the lines; *that which is not said* (omissions and silences) is as important as that which is said. This requires a different kind of approach, an essential element of which is to establish a dialogue, on non-confrontational grounds, with the protagonists in these debates.

This is the approach I adopted in the research leading to the book I recently finished, in which I discuss changing notions and models of gender that lie at the root of shari’a family rulings, that is, the ways in which the custodians of the shari’a perpetuate, modify, deconstruct and reconstruct the gender models as manifested in the legal rulings.⁶ I describe my engagement with protagonists of these debates in Qom. My research in Qom, starting in autumn 1995, and my introduction to the debates there, were facilitated by a young cleric, Hojjatolislam Seyyed Mohsen Sa’idzadeh, with whom I have been doing collaborative research since April 1995. His approach has the potential, I believe, to shift current discourses on gender in Islam onto a new level and to achieve a synthesis between Islam and feminism, at least at the level of jurisprudence. Before discussing his approach and work, let me put it in context by giving an outline of the current gender debates among clerics in the *houzeh-ye ‘elmiyeh*, that is the seminary milieu in Qom.

In terms of their gender perspective, the clerics I met in Qom fall into two broad

5. See Nesta Ramazani, “Women in Iran: The Revolutionary Ebb and Flow,” *Middle East Journal* 47, 3 (Summer 1993): 409-28; Homa Hoodfar, “Devices and Desires: Population Policy and Gender Roles in the Islamic Republic,” *Middle East Report* (Sept.-Oct. 1994): 11- 17; Ziba Mir-Hosseini, “Women and Politics in Post-Khomeini Iran: Divorce, Veiling and Emerging Feminist Voices,” in *Women and Politics in the Third World*, ed. Haleh Afshar (London: Routledge, 1996), pp. 142-70; and Ziba Mir-Hosseini, “Stretching the Limits: a Feminist Reading of the Shari’a in Post-Khomeini Iran,” in *Feminism and Islam: Legal and Literary Perspectives*, ed. Mai Yamani (London: Ithaca Press, 1996), pp. 285-319.

6. Mir-Hosseini, *Islam and Gender in Iran: Discussions with Ulama*.

categories. The first comprises those who adhere to the pre-revolutionary school of jurisprudence, which is now referred to as *fiqh-e sonnati* (traditional jurisprudence). These clerics see the gender model manifested in shari'a legal rulings as divine and immutable and believe that there is no problem to solve. Some, especially those who after the revolution remained active solely in the seminaries, are unimpressed by, even unaware of, the debates stemming from increasing contradictions between the gender rhetoric of the Islamic Republic and classical shari'a provisions.

The second category consists of those clerics who adhere to the new school, referred to as *fiqh-e puya* (dynamic jurisprudence). These clerics, unlike those of the first category, admit the need for change and recognize the influence of time and place. They are aware of, and sensitive to, current gender debates in the West, and are intent on finding an Islamic solution. They vary a great deal in their approaches. Some adhere to a modified version of the gender discourse developed by Ayatollah Motahhari in the 1960s, which explains and justifies gender differences in shari'a laws as being in harmony with the law of nature. Some dismiss the idea of equality in rights and duties as a Western concept with no place in Islam. At the other extreme are those who argue for gender equality on all fronts and seek a novel interpretation of the shari'a provisions.

The traditionalists still exert influence and power, both in the *houzeh* and in government, because of their age and high religious standing. Their arguments and reasoning are well known, and there is no need to discuss them here or to narrate my encounters with them. Suffice it to say that they take gender disparity and asymmetry so much for granted as the natural order of life that I found no room for debate with them, even at a theoretical level. I could find no common ground, no chance of establishing a dialogue with them; I could not accept the logic and validity of their views, nor they mine.

Gender Equilibrium: The Perspective of “dynamic *fiqh*”

The supporters of the school of dynamic *fiqh* are largely to be found among the younger generation of clerics. The school found a voice in 1985, after Ayatollah Ruhollah Khomeini issued a series of *fatvas* making chess, music, and one type of fish permissible (*halal*).⁷ One articulate spokesman of the new school, belonging to the older generation, is Ayatollah Ibrahim Jannati, a prolific writer in his early sixties. He is one of those clerics who remained in the *houzeh* and never became involved in politics. The gist of his argument is that the shari'a and its rules are eternal and immutable, but there is a constant need for re-interpretation of these rules, as new circumstances emerge. He rejects the argument put forward by some, that jurists must strive to modify the shari'a in response to the demands of the time. Instead, he argues that, when there is change in the subject (*mouzu'*) of a shari'a

7. A *fatva* (Arabic *fatwa*) is a religious opinion having the force of a decree.

ruling (*hokm*), either internally or externally, naturally there will be a need for a different ruling. This, he argues, does not mean a change in the divine rules as such, but merely a change in the nature of the subject which gave rise to that rule in the first place. For instance, sale of chess sets was forbidden because in the past they were used for gambling, whereas now, according to expert evidence, chess is a game, a mental exercise. In other words, the rule that chess used for gambling is forbidden has not changed; what has changed is the subject of the rule, i.e. the usage of chess, which necessitated a new ruling which makes chess licit.

Such arguments, which are put forward by one group of advocates of “dynamic fiqh,” are clearly circular in nature; but they can pave the way for the removal of restrictions placed on women by shari’a rulings. Other arguments are to be found in publications financed by the Islamic Propagation Office of Qom Seminaries (*daftar-e tabliqat-e Islami-ye Houzeh-ye ‘elmiyeh-ye Qom*), which actively promotes the development of the school of dynamic fiqh. This office produces a number of journals, including a women’s monthly, *Payam-e Zan*, which first appeared in March 1992. The editor is a young cleric, Seyyed Zia ad-Din Mortazavi. There is no woman on its editorial board.

Rather than “woman’s message,” as might be understood by its name, *Payam-e Zan* is the message of clerics in Qom intent on finding an Islamic solution for the “women’s question.” It is also the message of the clerical faction that adheres to Khomeini’s vision of an Islamic state, the *velayat-e faqih*, where the shari’a rules supreme, as interpreted and administered by one single jurist. This means that the shari’a should regulate every aspect of life, but must be able to deal with the challenges of the world in a realistic way.

The journal’s gender discourse is a modified version of that developed by Ayatollah Motahhari in pre-revolutionary Iran, as part of the discourse of the Islamic opposition to the secularizing policies of the previous regime. The gist of Motahhari’s argument is that the shari’a is in harmony with the law of nature, embodying God’s design for men, women, and society, and that the apparent disparity in rights and duties between men and women as mandated by the shari’a, if properly understood, is the essence of divine justice.

Between September and November 1995, I had three extended discussions with the editorial board of *Payam-e Zan*, in which I raised the contradictions and anachronisms in Motahhari’s discourse. The first discussion turned into a debate, which the editor suggested we should continue on the basis of greater preparation. I was asked to provide them with my questions in advance of our next meeting, which I did; but I also posed new questions as our debate progressed. I gave them a copy of my tape recording of the first session, and both of us recorded the two subsequent sessions. The November issue of *Payam-e Zan* (No. 44), which appeared before our final session, carried an editorial entitled “Women’s Issues: Seen from Our Corner,” which the editor described as the first of a series in which he intended to clarify the magazine’s position. After my return to London, the

January 1996 issue (No. 46) carried a transcript of part of our debate, under the title "Roundtable on Women's Issues with Dr. Ziba Mir-Hosseini and *Payam-e Zan*." The rest of the debate appeared in three further installments in February, March, and April 1996 (Nos 47, 48, and 49).

I started by asking how they could justify men running a women's paper and speaking for women. The answer was that ideally women should produce such a journal, but in reality this is not yet possible, as there are no women in the seminaries (*houzeh*) capable of doing so. Men do it out of necessity, as it is now imperative to provide a correct and balanced answer to the "women's question" within the seminaries. They then elaborated on their gender perspective, which, as already mentioned, was a version of Ayatollah Motahhari's thesis, based on the "naturalness" (*fetri budan*) of shari'a laws. This gave me the opportunity to refute Motahhari's arguments one by one. This is easy to do, since most of them are based on his selective use of Western psychological and sociological generalizations in order to defend the gender bias in shari'a laws. I contended that what Motahhari took as a law of nature is in fact cultural. I said that Motahhari's arguments were formulated as a response to the previous regime's secularization of family laws and policies, when the shari'a was under threat. Didn't they think that, 17 years after the establishment of the Islamic Republic, with the shari'a in power, one could approach them critically? If not, how could the shari'a, with its patriarchal legal logic, improve the lot of women? I argued that the models of marriage and gender relations constructed by Islamic jurists were informed by the logic of the contract of sale and were based on sacred texts in which women are depicted as inferior. How could they accommodate the aspirations of women of this century, who do participate in every aspect of life and do not see themselves as inferior?

I also posed some very specific questions on issues of *hejab* (veiling), segregation, divorce, and women's right to serve as judges, and questioned the notion of Divine Justice. All the time, I tried to engage them in expressing their own personal positions. For instance, I said, "no woman that I know will not be hurt if her husband takes a second wife, or repudiates her; then how can we say that shari'a rulings about polygamy and divorce are in harmony with women's nature and are the essence of justice? I speak as a woman; how can you men know what I feel?"

It was difficult to get direct replies to many of these questions; and certainly I got none to questions touching on their own personal experience and stance. We often talked across each other. Neither did I manage to convince them, nor did they provide a convincing defence of their position. My repeated efforts to bring a sociological dimension to the discussion were in vain, as the other side skillfully would shift their ground, invoking ethical rules. When I reminded them that many of these ethical rules never have been translated into legal rulings, they would answer: "Then that is the fault of Muslims, not Islam." We often found ourselves in a position where, although we agreed that a particular ruling was discriminatory,

they could not retract their assertion that all shari'a legal rulings were the essence of justice; they saw their duty as defending these rulings and rationalizing them on religious grounds. At the same time, I could not pursue my points, as I was afraid of being accused of a lack of belief and being too "Western" in my perspective.

It was clear that *Payam-e Zan's* conception of the shari'a was more moralistic-idealistic than legalistic-realistic.⁸ This was most obvious in their support for the rules of marriage and hejab (veiling). For instance, on the concept of *nafaqa* (maintenance) in Islamic law, they argued that it is a woman's right and a man's duty, and that a husband must provide for his wife and assume all household expenses, regardless of her or his financial situation. When I pointed out that today, in practice, many women work and spend their money in the house, they replied: "But they do not have to. Islam does not force them to do so." When I argued that this is not a choice for many families (and women), as they cannot make ends meet without the wife, too, going out to work, the reply was that the very fact that women are not legally required to work puts them in an advantageous position; hence the ruling was for women's own good. On hejab, likewise, they argued that if the shari'a requires women to cover themselves in the presence of non-related men, it similarly requires men to guard their gaze when they see women. I pointed out the disparity in the enforcement of the two rules in practice: that there never has been (and indeed cannot be) a law to force men to guard their gaze, so they are free, and it remains a personal choice for them, while, according to dominant opinion in the shari'a, it is mandatory for women to cover themselves, and they are punished if they don't— as in today's Iran. The reply was that hejab is for women's own good and protection, because their nature is different from men's.

This debate is clearly conservative in content. Not surprisingly, the journal managed to keep this flavour in the way it published the transcript, giving the reader the impression that they won the argument and managed to convince me. They changed the order in which I raised the issues. The first session, in which I was seeking common ground with the clerics, and also testing how far I could go in exposing my own ideas, appears in *Payam-e Zan* as though it was the final, concluding session. The actual final session, though amicable, was confrontational and concluded with lack of agreement. In addition, although they carefully preserved the wording of my questions and their replies, they omitted some of my questions while expanding their responses to others beyond what was recorded. Both the omissions and the additions highlight *Payam-e Zan's* perspective. In my book, I give my own version of the texts of the discussions, in the order in which they were recorded, and with necessary interpretations.

The significance of these debates is that it is now possible to have them in

8. I found the same conception when talking to religious judges in courts in the 1980s, see Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law* (London, I. B. Tauris, 1993).

clerical circles in Qom, and that clerics are willing to debate with women like me (educated in the West) to seek to understand the logic of feminist critiques of the shari'a rulings and to ascertain for themselves whether they contain any useful proposals for resolving basic gender problems. This is indeed new and has little precedent in the scholarly tradition of seminaries in Qom. In the early 1970s, Motahhari's book *The Hejab Issue*, in which he argues in favour of the mandate of hejab in the shari'a, more or less was banned by eminent ayatollahs simply for raising an issue—women—that should not be discussed in the seminaries. Today, however, issues relating to women are widely discussed. Ayatollah Yusef Sane'i (among others) devotes part of his advanced lessons (*dars-e kharej*) to elaborating a new interpretation of family laws.

One of Sane'i's advanced students is the editor of *Payam-e Zan*, who arranged for me to meet him. Ayatollah Sane'i held one of the highest government offices, as Public Prosecutor-General, between 1979 and 1984, before returning to seminary life, where he devoted his time to scholarship. He became a *marja'*, or "source of imitation," that is, an authority on Islamic law whose rulings are binding for his Shi'a followers and who is in a position to finance students. I was asked to hand in my questions in advance and was advised by my cleric friend, Sa'idzadeh, not to be as forward with my views and arguments as I had been with the magazine editors; I should remember that I was talking with a source of imitation, a *marja'*.

Initially, I was deprived of a voice: My questions were read aloud by the magazine editor. To my surprise, however, I found the ayatollah extremely open and willing to debate. His interpretations were truly radical. He admitted that Islamic jurisprudence (*fiqh*) had dealt with women unjustly, but said that there are other interpretations that the present state of society does not allow jurists to voice. He asked for a document to be brought in. It related to the time when he was Public Prosecutor-General. In it, he had made an *estefah* (a question to elicit a fatwa decree) to Ayatollah Khomeini, to settle a legal disagreement between himself and the members of the Council of Guardians over the amendment of the Civil Code articles on divorce. According to the Civil Code, reflecting the shari'a position, the right to divorce rests exclusively with the husband, who can repudiate (*talaq*) his wife whenever he wishes. A woman can obtain a divorce only by inducing her husband's consent by foregoing her right to her dower (*mahr*) or other forms of compensation; or she can resort to the court, where she has to establish a valid ground, such as that the continuation of marriage will cause her "hardship and harm" (*'usar wa haraj*).⁹

In his question, Ayatollah Sane'i stated the objections of the jurists of the Council of Guardians to giving the judge a free hand in issuing a divorce on the ground of "hardship," and requested Ayatollah Khomeini's opinion. In his fatwa,

9. For a discussion of divorce laws in Iran, see Mir-Hosseini, *Marriage on Trial*, chapter 2.

Khomeini wrote: "Caution demands that first the husband be persuaded, or even compelled, to divorce; and 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]." This simpler way, Ayatollah Sane'i argued—which even Ayatollah Khomeini did not dare to utter—was that if a woman desires a divorce but her husband refuses his consent, such a refusal is, on its own, proof of "hardship" in marriage. In such a case, either the wife can divorce herself (because, according to the "hardship" (*haraḡ*) principle, the husband loses the right of divorce and the wife acquires it); or she can demand that the marriage be annulled (*faskh*), just as the husband's insanity or impotency would give her grounds to do, according to another fiqh principle of "no harm" (*la-zarar*).

This, I agreed, was indeed a radical interpretation. He argued that, in the past, such an interpretation was not elaborated because family relations and the position of women were different and there was no need for it. New interpretations, in harmony with the demands of this century, did not evolve because Muslim jurists and the shari'a did not have the proper tools for law-making. As to the vexed issue of those "sayings" attributed to the Prophet and Imams in which women are depicted as inferior, Sane'i argued that they are mostly fabrications by Sunni misogynists who were hostile to Fatima, the daughter of the Prophet, through whom Shi'a Muslims trace their Imams.¹⁰

Gender Equality: an Emerging Perspective

Ayatollah Sane'i's jurisprudential arguments and his position on women are taken further in the writings of a less eminent cleric, Hojjatolislam Seyyed Mohsen Sa'idzadeh, my research collaborator. Sa'idzadeh is typical of a new breed of clerics who are the product of the Islamic Republic. He was 18 at the time of the Revolution and was one of the first graduates of the law school in Qom (*Madraseh-ye 'Ali-ye Qaza'i-ye Qom*), newly set up to train judges for the Revolutionary Courts. He became a judge at the age of 24, then resigned his post in 1988 to return to seminary life in Qom, where he worked solely on women's issues until early 1995, when he accepted a government post.

Sa'idzadeh has written extensively, but only a small amount of his work has been published so far, almost all in *Zanan*, a women's journal with an Islamic feminist agenda. Since 1994, he also has been a regular contributor to *Payam-e Zan*. Elsewhere, I have analysed his articles in *Zanan*, which appeared under a series of female and male pseudonyms as well as his own name.¹¹ In these articles he argues for women's right in Shi'a law to become judges and arbiters in court and sources of imitation (*marja'*). He also deals with the gender biases of family and

10. The full transcript of this interview appeared in two instalments, "In the Presence of Ayatollah Hajj Yusef Sane'i," *Payam-e Zan* 50 and 51 (May and June 1996).

11. Mir-Hosseini, "Stretching the Limits," pp. 296-314.

penal laws. Here I can give only an intimation of his analytical framework.

Sa'idzadeh calls his approach the Equality Perspective. He contends that it always has existed in fiqh and many eminent jurists have adhered to it, alongside the dominant approach, which he calls the Inequality Perspective. He sees his achievement—his “art”—to be in articulating the Equality Perspective coherently and shaping it to accord with twentieth-century realities. He grounds his arguments in a commentary on theological and jurisprudential issues, with the premise that theologians and jurists, in understanding the doctrines and in inferring shari'a rulings, cannot detach themselves from their own world-view, which, in turn, reflects the state of knowledge, politics, and social customs of the age and milieu in which they operate. He further argues that, apart from some minor religious rules (relating to biological differences), Islam regards men and women in the same way. Thus, it can accommodate feminism, which articulates women's aspirations in this century. He defines feminism (*feminizm*, in Persian, which has no equivalent) as:

a social movement whose agenda is the establishment of women's human rights. Feminism endeavours to free women from an unwanted subordination imposed on them by androcentric societies. It recognizes that women are independent and complete beings, and puts the emphasis on the common humanity of the sexes, not their differences.¹²

Unlike Motahhari, but like a number of feminist writers, Sa'idzadeh sees gender inequality in shari'a law not as a manifestation of divine justice, but as a mistaken construction by male jurists. He argues that it goes contrary to the very essence of Divine Will as revealed in the Qur'an. Again, in contrast to Motahhari and most shari'a-based arguments, he sees women's sexuality as defined and regulated by familial and social circumstances, not by nature and Divine Will. Four of his primary postulates, drawn from his various writings, are:

- Equality does not mean parity and identity of rights and duties, but it means that gender is not used as a criterion in their determination. Gender is not the basis for perfection or defectiveness of men or women. God has created both sexes perfect, their difference is not for separating them but for connecting them. Even in a case where a ruling (*hokm*) apparently pertains to one sex only, again its subject is humankind with that specific sexual attribute. For instance, if sex-change could enable men to become pregnant, rulings relating to pregnancy would apply to them.
- Gender is a social and human concept and does not enter the divine realm. Thus,

12. Seyyed Mohsen Sa'idzadeh, “Correspondence between Feminism and Islamic Religious Issues,” in *Women, Gender and Islam*, proceedings of the Sixth Seminar of the Iranian Women's Studies Foundation, 1995, p. 34.

it never could have been a consideration for the Divine Law-Giver. Sexual markers recommended by religion cannot be taken as proof of gender roles. For instance, Islam recommends that women keep their nails long and coloured but that men keep them short and plain. Such recommendations are not intended to separate the sexes nor to create gender roles. Because the length and colour of nails are matters of custom and social habit, religion endorses them as sexual markers of beauty. When people change their customs, whatever becomes a marker of feminine beauty, even if it goes contrary to this recommendation, religion will endorse it, as with earrings. In the early years of Islam, only men pierced their ears and wore earrings; now in Muslim societies it is a women's fashion, although in the West men also wear them.

- A distinction must be made between two matters: a) belief in religion and following its rulings, and b) discussing religion and proving or disproving its axioms and rulings. Discussing Islam is a matter that bears no relation to people's belief or practice. Likewise motives for discussing or appealing to religion are not necessarily indicative of people's belief.
- A substantial number of hadith and fiqh theories obstruct the way to equality between the sexes. A majority of jurists and all hadith specialists have sacrificed the principle of equality in Islam to endorse a set of theories resting on assumptions that are no longer valid but still remain part of Islamic jurisprudence.

Sa'idzadeh has set himself the task of demolishing the invalid theories, arguing that it should be done from within fiqh itself, using its own language and mode of argumentation. His approach and style of writing are those of fiqh texts. First, he introduces the issue, for instance, of woman's right to serve as a judge, and places it in its fiqh context by reviewing the divergent positions of jurists, both Shi'a and Sunni. He then scrutinizes these opinions in the light of Qur'an, hadith, consensus, reason (the four sources of law in Shi'a Islam), and the practice and custom of the time. Finally, he refutes those that are contrary to the principle of equality and elaborates on those which accord with it. To advance them, he uses a number of arguments and devices that Muslim jurists have used for centuries, in both Shi'a and Sunni schools. They include the following:

- Distinguishing between the Divine Law-Giver and worldly law-makers (jurists), and between primary (Qur'an and hadith) and secondary (fiqh texts) sources of Islamic law. Primary sources are subject to innovative interpretations, while secondary sources are debated, and at times refuted, with the aid of the former, or by the very logic of their own arguments.
- Arguing that social custom (*'urf*) and politics (*siyasat*) are among the decisive factors in upholding or modifying a shari'a ruling, even if it is rooted in explicit Qur'anic injunctions, which in turn are divided into two categories: binding (*elzami*) and guiding (*ershadi*). The Prophet's practices also are divided into

three categories: those emanating from his mission as the Prophet of Islam (based on Revelation); those emanating from his position as leader of the Muslim community (based on political and social considerations); and those emanating from his human status (based on his physical and psychological individuality). Only the first, based on Revelation, are part of the primary sources of shari'a law and are binding on all Muslims.

- Dividing the rulings inferred from primary sources of the shari'a (Qur'an and hadith) into three kinds: those that sanction already existing rulings; those that reform existing rulings; and those that create new rulings. Only the last, largely in the realm of ritual and belief, are mandated by Islam and are thus immutable. The first two categories are not, and evolve and change according to demands of time and space, as the Prophet himself intended and expressed. Here Sa'idzadeh resorts to arguments well-grounded in fiqh literature, such as incidences of abrogation (*naskh*) in the Qur'an itself, the nature of Qur'anic rulings, and whether they are incumbent equally on those to whom they are addressed (*mokhatebin*) and those who heard them directly from the lips of the Prophet (*mushafehin*) and so forth.¹³

Conclusion

The Islamic Republic inadvertently has given birth not only to a new school of jurisprudence (*fiqh-e puya*), which is slowly and painfully trying to respond to social realities, but also to a new reading of gender relations in the sacred texts. Although still nascent, one can witness among the ulama the makings of a line on women that is radically different from that of the official discourse, which still is identified with the position taken by Ayatollah Motahhari in the 1970s in opposition to the shah's reforms.

In addition, the extensive participation in the Revolution, and since then in political life, of women from the "traditional" and religious classes, not only has made them gender aware but has gendered the whole political process. Meanwhile, the world in which Iranian clerics live has changed beyond recognition. They no longer are defending a corner by rejecting whatever is new because of the non-Islamic nature of society. Their fortunes have changed. After the Revolution, it became an asset to have a cleric son-in-law, and young clerics started to marry into families and environments that were closed to them before. The wives they married brought their own different life styles and values with them and have had a significant effect on life in the seminaries. In Qom, I was struck by the number of clerics I met or heard of whose wives had left them or were making life for them,

13. Sa'idzadeh was arrested in Qom in June 1998; as of September 1998 he had not been tried, nor had the charge against him been made public, but they probably concerned some outspoken articles published earlier in the summer in the daily *Jame'eh*.

as men put it, “worse than hell.”¹⁴ For the younger generation of clerics, women and their presence in society as colleagues and counterparts are facts of life; for them, unlike their elders, it is no sin to work alongside women.

In Iran in the 1990s, the guardians of Islam are burdened with all sorts of practical issues with which they have not had to deal before. Or if they did deal with them, it could remain at an abstract and generalized level, leaving it to the conscience of the believer to interpret and carry out the appropriate practices. Now they have to meet the challenges of the contemporary world, and this encounter also is challenging, and in the process transforming, the ways in which gender issues are debated within an Islamic framework. Not only the state in Iran but also its people—whether believing or practicing Muslims or not—have had to redefine their relationship with the shari‘a and their understandings of the sacred texts on which its mandates rest.

What I hope has been conveyed here is that the issue of “gender in Islam” is one that is currently at stake in Iran at all three levels I suggested at the beginning: the level of interpretation and re-interpretation of the texts; the level of political rhetoric and discourse; and the level of the social experience of men and women. The article also shows how each of the levels affects the others. Further, I would argue that it is difficult for those who do not recognize their own position to give proper weight to what is happening at all three levels. Whether academically or politically, it is too easy to find oneself privileging either sacred texts, or political discourses, or social realities.

I have not spelled out my own position, but I hope that it has become clear from my argument that I have been influenced by what has been happening at all three levels. The Islamic Revolution in Iran confronted me, like many others, with my own multiple identities. Elements which I had taken for granted, I now had to re-examine. I chose detachment rather than commitment, either to the Revolution or to any of the opposition groups. Subsequent developments in Iran and elsewhere, in particular the Persian Gulf War in 1990-91, prompted me to position myself more clearly in relation to Islamicist discourses and those which denounced them, including feminist ones. I am neither an ardent supporter of Islamist positions, nor an implacable opponent. I acknowledge the Islamic Republic as a reality, for better or worse, and am prepared to engage in dialogue with its advocates, not just out of academic/intellectual interest, but also with a personal political agenda: to contribute, in however small a way, to opening up spaces where power and gender relations can be renegotiated. In short, I believe that “gender in Islam” is, in the end, what Muslim men and women make it to be.

14. Fieldnotes, 1995.