

## Women's Question Between the Hammer of Modernity and the Anvil of Traditions: A Study in the History of Texts / Naşr Hâmid Abū Zayd\*

### Gelleneğin Çekici ile Modernitenin Örsü Arasında Kadın Meselesi: Metinlerin Tarihi Üzerine Bir İnceleme / Nasr Hamid Abu-Zeid

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#### Abstract

The article examines the complex interplay between religion, culture, and societal structures in shaping the status of women in Arab Islamic societies. It highlights how religion serves as a legal and moral reference, influencing perceptions of gender roles amidst internal and external pressures. Continuous defeats in the Arab socio-political landscape and imperialist hegemony have fueled identity crises and distorted portrayals of Islam as antagonistic to humanity and gender equity. This has led to a dual dynamic of external blame and internal marginalization, exacerbating women's oppression. The study distinguishes between inherited traditions and Islamic shari'a, revealing a gap between the Quran's intent and jurisprudential interpretations. By analyzing the origins of shari'a and utilizing contextual methodologies like asbab al-nuzul (occasions of revelation), it demonstrates that Quranic descriptions of gender roles often reflect historical contexts rather than prescriptive norms. Citing thinkers like Muhammad 'Abduh, the article argues for equality between men and women in Islam, emphasizing shared roles in religious, social, and political domains. Finally, the study critiques selective interpretations that marginalize women and advocates for methodologies that incorporate narrative context, linguistic analysis, and the sequence of revelations, offering a deeper, more authentic understanding of gender in Islam.

**Keywords:** Women, Islam, Feminism, Womensrights, Egyptian feminism.

## Özet

Bu makale, İslâmî Arap toplumlarında kadının yerini şekillendirmede dinî, kültürel ve sosyal yapılar arasındaki girift etkileşimi ele almaktadır. İç ve dış baskıların ortasında cinsiyet rolleri algılarına etki eden dinin nasîl hukukî ve ahlâkî referans olduğu vurgulanmaktadır. Sosyo-politik Arap manzarasındaki süregelen yenilgiler ve emperyalist hegemonya, kimlik bunalımlarını körüklemiş; İslâm'ı insanlığa ve cinsiyet adaletine bir anti-kahraman olacak şekilde çarpık bir surette resmetmiştir. Bu husus, dışardan kınamaların, içerden de marjinalleştirmenin, ötekileştirmenin olduğu ikili bir duruma yol açarak, kadınlar üzerindeki baskıyı şiddetlendirmiştir. Bu çalışma, nesilden nesile intikal etmiş geleneklerle İslâmî şeriatı birbirinden ayırarak, Kur'an'ın aslında kast ettiği ile fikhî yorumlar arasındaki boşluğu, kopukluğu ortaya çıkarmaktadır. Çalışma, şeriatın aslını, kaynağını çözümleyip esbâb-ı nüzûl gibi bağlamsal metodolojilerden istifadeyle göstermektedir ki Kur'an'ın cinsiyet rolleri tanımlamaları, yerleşik normlardan ziyade daha çok tarihsel bağlamları yansıtmaktadır. Muhammed Abduh gibi düşünürlere atıfta bulunan makale, İslâm'da kadın-erkek eşitliğini, dinî, sosyal ve siyasî alanlarda paylaşılan rollere vurgu yaparak tartışmaktadır. Son olarak, bu çalışma, kadını ötekileştiren çeşitli tefsirlere eleştiri getirirken, anlatı bağlamlarını, dilbilimsel analizi ve vahiylerin iniş sırasını da dikkate alan ve böylelikle İslâm'da toplumsal cinsiyete yönelik daha derin ve daha özgün bir anlayış sunan metodolojilerin savunuculuğunu yapmaktadır.

**Anahtar Kelimeler:** Kadın, İslâm, Feminizm, Kadın Hakları, Mısır feminizmi.

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There are multiple angles from which we can discuss women's issues, especially with the complexity of contemporary societal structures on the one hand, and the interconnection of relationships between societies in the modern era on the other. The issue of women's rights has social, cultural, and intellectual dimensions within every societal structure. It also has human dimensions that transcend the boundaries of specific societal structures.

Added to this complexity in our Arab-Islamic societies is a particular dimension of "religion," which still represents a Shari'a and legal reference point derived from its ethical and spiritual foundations. Since the beginning of what is called the Arab Renaissance in the first half of the 19th century, the issue of "women's education" first, and then "liberating" her from the stagnant, outdated traditions that hinder the movement of society as a whole second, has been a priority in the agenda of urgent renaissance tasks.

Rifā'a Rāfi' al-Ṭaḥṭāwī (1801-1873), a religious scholar whose mission in Paris was to lead the prayers for the members of the military mission, guide them in matters of their religion, and issue fatwas for them, was highly impressed by the educated Parisian woman, even those who dressed in attire that did not include the Islamic hijab, as long as they preserved their chastity. He says at the end of his book on Paris, *Takhliṣ al-ibrīz fī talkhīṣ bārīz* (*The Refinement of Gold in the Abridgment of Paris*): "The confusion regarding the chastity of women does not come from whether they cover themselves or expose themselves, but rather from good or bad upbringing."

Thus, al-Ṭaḥṭāwī made it one of his religious and national duties to advocate for women's education. He wrote *Al-murshid al-amīn fī tarbiya(t) al-banāt wa'l-banīn* (*The Reliable Guide in the Education of Boys and Girls*). From al-Ṭaḥṭāwī, the torch was passed to Muḥammad 'Abduh (1848-1905), then to Qāsim Amīn (1863-1908), and finally to al-Ṭāhir Ḥaddād (1930). All of them, as we will see, started from the same religious reference that the opponents of equality between men and women in rights and duties also base their arguments on.

There is no doubt that the renewed discussion of women's issues in the Arab and Islamic world is linked to the growth of the phenomenon that its proponents usually call the "Islamic Awakening," while others call it "Political Islam," and in Western media, it is labeled as "Islamic Fundamentalism." Whatever the label attached to this phenomenon in its various forms, its presence is central to raising questions that we all thought the Renaissance discourse had provided decisive answers to, especially those questions related to women's rights in Islamic law.

We may repeat here what is known to all: the Arab existential crisis that reached its peak with the defeat of June 1967 marks the starting point of reviewing and questioning everything that had been established politically, socially, culturally, and intellectually. Thus, the process of questioning began at all levels. It is a process that has not stopped, and we do not think it will stop, as the consequences of the defeat continue to unfold and escalate sharply. As soon as the Arab consciousness came to terms with the defeat and felt capable of containing it and dealing with it (October 1973), it discovered that further defeats awaited: the Camp David Accords between Egypt and Israel, the fragmentation of the Arab political front, the invasion of Beirut, the First Gulf War, Desert Storm or the Second Gulf War, the invasion of southern Lebanon, the peace negotiations—Madrid, Oslo, Gaza, and Jericho, and so on. This succession of defeats has led to the revival of ethnic and sectarian tensions, which have taken the form of regionalism on the political level and other forms of social marginalization and exclusion, including the oppression of minorities. In all cases, there is an oppressive, authoritarian discourse that is unable to listen and refuses dialogue, claiming to possess absolute truth and attributing to itself a higher authority derived from the divine and sacred. Whether the discourse is political or social, the result is the exclusion and oppression of the individual, both men and women, with women and children suffering double oppression in this process.

If we move beyond the Arab reality to the international reality, the disappearance of the bipolarity—due to the disintegration of the Soviet Union and the disappearance of pluralism in the global system—has led to American 'dictatorship.' A bipolar global system, despite its flaws primarily seen in polarization and bloc formation, remains far better than

a unipolar system that allows no room for maneuver and accepts nothing less than complete submission to the will of the American dictator. In order to give the new dictatorial system a legitimate ideological cover to justify its control over world management, it declared the 'end of history,' the end of the era of ideologies, and the beginning of the age of 'globalization.' This new situation has led to a state of chaos, resulting from the end of the age of certainties and the beginning of major questions. This chaos manifested in the emergence of latent and suppressed sectarian and ethnic conflicts within the international community as a whole, not only in the societies that were once known as 'totalitarian regimes.' The cultural and political significance of the concept of European unity, especially after the achievement of the common European market, implies the meaning of 'fencing,' that is, creating a barrier between European peoples and non-European peoples. Walls fall within Europe, and NATO expands to encircle the Third World outside these walls in order to exert greater control over its resources and exploit its remaining wealth. In this context, the concept of 'international legitimacy' becomes the legitimacy of northern interests against the interests of the south. Iraq is besieged after its destruction, and Libya and Syria are targeted under the pretext of challenging international legitimacy and supporting terrorism, while the terrorist practices of the Zionist entity defying international decisions against Palestinians and Lebanese are met with silence.

This international situation undoubtedly contributes to fueling the Arab reality with more sectarianism and ethnic tensions that find no outlet in confronting the true real enemy—backwardness, dictatorship, and American-Zionist hegemony—so they turn inward, fortified by their illusions. In the international context in which the term 'clash of civilizations' was coined, and in which Islam was declared the enemy of the West, Muslims have no choice, due to this challenge, but to rally around the representatives of Islamic discourse. These representatives do not merely ignite the fires of popular anger against political imperialist West, but extend this anger to encompass the entirety of civilization, culture, and the human heritage absorbed into what is called 'Western civilization.' In other words, it can be said: if the successive Arab defeats have re-raised the questions of 'identity,' 'heritage,' and 'specificity' from a mostly sectarian ethnic perspective, the international situation deepens this perspective.

### **The New Questions: Where Do We Stand?**

The world is now occupied with issues that far surpass the concerns of women's education, their entry into the workforce, equality with men, and their social responsibility as independent human beings, not only capable of participating in decision-making but also capable of leadership and achievement. In this context, where women have begun to free themselves from the matter of being on par with men and are trying to express their identity, which is "independent" from that of men yet equal at the same time, we are still preoccupied with questions regarding the woman's competence and eligibility to enjoy the right of divorce, to ascend the judicial bench, or to participate independently in political life. Despite the fact that the Arab feminist movement is over a century old, and despite women holding ministerial positions in some Arab countries, as well as women already occupying the judicial bench in Tunisia, Jordan, Yemen, Syria, and Lebanon, the general discourse in Egypt now seems as though we are living in the early days of the Renaissance.

It was surprising that one of the Egyptian personal status courts—whose surprises in recent years have become too many to count—issued a ruling that obligated a university professor specializing in nuclear research to comply with her husband's desire to have children, even at the expense of sacrificing her research work and her educational role at the university. The justification for the ruling was based on what the judge perceived to be the role and main duty of women, which the ruling summarized as marriage and motherhood: "The family life of the wife comes first in importance." The wife had left her husband after a five-year marriage due to their disagreement over the issue of having children, with the wife insisting on not having children for fear of the effects of radiation and chemicals she dealt with in the laboratory on the fetus (*The Family life*, 1998). The judge did not consider that a couple's disagreement over having children cannot be resolved by a judicial ruling that demands the wife's submission, as if she were a biological being without will or choice. The judge could have given the wife the option to either fulfill her husband's wish or opt for divorce, and the same could have been applied to the husband, as marriage is not a contract of submission. However, it seems that the judge's "enslaving" concept of the marriage

contract stems from his view of it as an Islamic concept. The judge is not concerned with the role played by the university professor in the fields of research and education, a role that surpasses in value and importance the sole dedication to marriage and childbirth. Nor does the judge worry about the backwardness in scientific knowledge and education that the Islamic world is suffering from today. He also seems unaware of the discussions about the crisis of scientific research in Egypt, a debate that was first raised during Professor Aḥmad Zuwayl's<sup>1</sup> visit to Egypt and the celebrations held in his honor for receiving a prestigious scientific award in the United States, where he works. The debate then intensified following the nuclear tests conducted by both Pakistan and India, leading to a series of discussions that soon subsided, only for the discussants to engage in other debates.

The laws regulating the movement of society, especially in the field of personal status, still rely on the reference of Shari'a. However, Shari'a has not been legally formulated in a precise manner that allows for limited interpretation when applying the legal text to the case in front of the judge. Without achieving this precise legal formulation, the judiciary in Egypt—especially in the field of personal status—will remain a fragile structure, with rulings subject to the personal views of the judge, inevitably influenced by the general social and political climate.

But what about the eligibility of women to become judges? The outcome of the debate from both supporters and opponents relies largely on the sayings of the jurists. The opponents base their arguments on the consensus of the "majority"—the majority of scholars from the Mālikī, Shāfi'ī, and Ḥanbalī schools—that women are not fit for the judiciary. They consider manhood a basic condition since the judiciary is part of "guardianship" or "leadership," both of which require "manhood." Supporters, however, refer to Muḥammad ibn Jarīr al-Ṭabarī (d. 310/923), the historian, interpreter, and jurist, and to Ibn Ḥazm al-Zāhirī (d. 456/1064), both of whom—along with the position of the Khawārij—state that manhood is not a condition for assuming the judiciary, and that women have the right to perform the role of a judge just like men. Some take a middle

<sup>1</sup> Professor Zuwayl (1946-2016) was an Egyptian-American chemist awarded the 1999 Nobel Prize in Chemistry for his pioneering work in femtochemistry.

position between the enthusiasts and the opponents, drawing on the view taken by the Ḥanafī jurists, who argue that a woman's eligibility for the judiciary is analogous to her eligibility to give testimony. Based on this, they permit women to assume judicial duties, but not in criminal cases (hudud and retribution). However, the reliance on the sayings of the forefathers is justified by the opponents and the cautious with arguments that evoke the "natural" differences between men and women, seeing them as eternal and inherent. Examples include the emotional nature and weakness of women in contrast to the rationality and strength of men, or that the work of women in the judiciary—which serves as a prelude to sitting on the judicial bench—requires, at times, traveling to crime scenes in remote areas at varying hours of the night and day, which is a hardship that women cannot bear, and which also conflicts with their family duties<sup>2</sup> (Al-Ḥāfiẓ & Al-Fattāḥ, 1998).

It was expected that the highest religious authority in the country would support the idea of women working in the judiciary with enthusiasm, rather than simply giving reluctant approval. However, it is clear that the Grand Imam sides with the opponents, relying on the same traditional arguments that discriminate between men and women on the basis of nature. In an interview with him, the Grand Imam began by announcing that there is no text in the Qur'an or the Sunnah that prevents women from ascending to the judiciary. This clear statement was sufficient, but the Grand Imam continued by pointing out the practical difficulties and the obstacles of traditions that do not allow women to work efficiently in the public prosecution. When the interviewer asked, in a conclusive

<sup>2</sup> The Egyptian press reflected various opinions during the last six months. However, several newspapers covered the issue in a manner veiled in mockery. For instance, in *Al-Wafd* newspaper (June 25, 1998), an article defending women's right to assume the position of a judge was published under the title "The Woman Judge!"—the exclamation point inserted by the editor reflects a negative evaluation of the article. Similarly, *Al-Jumhūriyya* newspaper ran an investigation on the subject under the title "Women's Talk: Women have been working in the judiciary for 44 years," while *Al-Ahrām* published a cartoon of a woman sitting on the judge's bench, holding a kitchen utensil instead of a gavel. The peak of ridicule was reached with the title published by *Al-Ahrār* newspaper in their investigation, "Excuse me, the Judge is Pregnant." This information is sourced from a report prepared by Muḥammad Ḥasan 'Abd al-Ḥāfiẓ and Maḥmūd 'Abd al-Fattāḥ for the Egyptian Women's Issues Center titled "The Image of Women in the Egyptian Press." See a summary of the report in "The Egyptian Woman in the Eyes of the Press," *Al-Ahālī* newspaper, issue no. 895, November 11, 1998, p. 10.



manner: “So we understand from this that this is a personal opinion of the Grand Shaykh of Al-Azhar, and not based on religious law?” The Shaykh immediately replied, “But it is based on jurisprudential and fundamental principles derived from religion.” Thus, he withdrew with his left hand what he had previously granted with his right hand, and the final result is that the quest for enlightenment discourse has fallen into the pit of justifying “traditions” with religious arguments that cover up their “male-dominated” distortions (Al- Şibā’ī, 1998).

“Traditions” usually take on a more refined name, “heritage,” which has become an obsessive concern since the great defeat. With the rise of the “political Islam” movement, “heritage” has become synonymous with Shari’a, and Shari’a has been equated with religion itself.

### **The Term “Shari’a” Between “Jurisprudence” and “Religion”**

Many researchers distinguish between the concept of “Shari’a” and the concept of “jurisprudence.” Shari’a refers to the universal principles and rules revealed by God Almighty, while “jurisprudence” represents the human interpretations and efforts of Muslim scholars throughout different eras and regions in applying these principles to actual situations. This distinction is precise, and its formulation, in terms of structure, is flawless. However, the real issue lies in the criteria for application when discussing a particular issue, as earlier jurisprudential opinions are often cited, as we have noted in the previous examples discussed. When someone asks about the nature of the universal rules and principles that form the essence of the term “Shari’a,” the reference is often to the concept of “universal objectives” (*al-maqāşid al-kulliyya*), even though these “objectives” are merely interpretations by scholars of the fundamentals of Islamic jurisprudence, especially Abū Ḥāmid al-Ghazālī (d. 505/1111) and Abū Ishāq al-Shāṭibī (d. 790/1388). In other words, at the level of application, the concept of “Shari’a” refers to human interpretations and deductions.

Perhaps the root of the confusion lies in the fact that the concept of Shari’a or the term “Shari’a” is not clear because it has not been fully discussed

from a purely epistemological perspective. There has been a prevailing belief that Islam is both “*aqīda* (creed) and *Shari‘a*,” meaning it consists of two parts that can be separated, though they are complementary. The first part is creed, represented in the belief in the One God, His angels, His books, His messengers, the Last Day, resurrection, judgment, paradise, hell, and divine will (*qadar*) in both its good and bad. The second part, complementing the creed, because it stems from it, is “*Shari‘a*,” represented in the system of commands and prohibitions that regulate the individual and social behavior of believers, as well as the relationship of the believing community with other groups, whether within the same society—like in the case of the Yathrib (Medina) society that included Jews and polytheists alongside Muslims—or between Muslim and non-Muslim societies. This understanding is established and widely accepted among Muslims, both the general public and scholars, and is considered an unquestionable belief. It is regarded as one of the “immutable” aspects of faith, and anyone who attempts to open a discussion on it risks being accused of questioning their faith and belief, and being completely cast out from the fold of Muslims.

And there is no harm in holding any intellectual belief, as long as it does not confuse itself with the certainty of religious faith within the soul. However, what happened in the second half of the twentieth century was that the belief in the existence of “*Shari‘a*,” in the sense of laws and legislations known in modern societies, and even considering it equal to or superior in efficiency to those modern laws, led to a state of conceptual confusion. This belief intertwined with the emotion of religious faith, turning the idea into a religious doctrine. In this understanding, “*Shari‘a*” became the other face of the creed, and Islam was seen as incomplete without both together. Hence, the implementation of “*Shari‘a*” became an urgent demand; without it, Muslim societies were deemed to lose their “Islamic” identity and turn into “ignorant” societies. This is the notion formulated by Abū al-A‘lā Mawdūdī (d. 1399/1979) in the context of the sectarian political conflict in India on the eve of independence, which led Muslims in India to strive for separation and establish their own state, which became Pakistan. This idea was later embraced and spread throughout the Arab world by the Egyptian thinker Sayyid Quṭb (d. 1386/1966) in a similar context, during the conflict between the Muslim Brotherhood

in Egypt and the Free Officers movement over sharing political power after the movement's success in expelling the king and dissolving all political parties except the Muslim Brotherhood, thereby monopolizing governance. Thus, Islam as a creed was no longer sufficient, and "Shari'a" became an essential component of religious faith.

But this strong, tight bond, which turned "Shari'a," or rather jurisprudential laws, into a creed and religion, was not the creation of Mawdūdī, even though Mawdūdī gave it the form that is now prevalent in both moderate and extremist religious discourse. The origin of this understanding actually goes back to the link between the political concept of "caliphate" and religion. This link was born in the context of the discussion that took place in the Islamic world after the Turkish Kemalists, at the end of the first quarter of the twentieth century, first separated the sultanate from the caliphate and then abolished the caliphate entirely. During this discussion, political ambitions to occupy the now-vacant position became entangled with intellectual battles between supporters of the decision, such as 'Alī 'Abd al-Rāziq (d. 1386/1966), author of *al-Islām wa-uşūl al-ḥukm* (*Islam and the Foundations of Government*), and its opponents, led by Muḥammad Rashīd Riḍā (d. 1354/1935), author of *al-Khilāfa aw al-imāma al-ʿuẓmā* (*The Caliphate or the Supreme Imamate*). In this conflict, the al-Azhar institution, in an effort to support King Fu'ād's aspirations to ascend the throne of the caliphate, set up a form of inquisition against 'Abd al-Rāziq and his book, ultimately condemning the man for heresy. Not only was he removed from his judicial position, but he was also stripped of his scholarly titles, including the withdrawal of his "scientist" certificate. In this context, the concept of a "religious state" was crystallized, perhaps for the first time in the history of Islamic thought, and it remains the focal point of intellectual struggle since Ḥasan al-Bannā (d. 1368/1949)—a student of Rashīd Riḍā—founded the Muslim Brotherhood in Egypt in 1928.

To open the closed gate of discussion about the concept of Shari'a and its relationship to religion/Islam, it is essential to return to the so-called original realm of discourse for words and expressions. This realm predates their transformation into concepts and terms laden with the weight of historical, social, and political conflicts and their intellectual and cultural

expressions, along with the semantic accumulations they generate. Such an analytical return might reveal some of the roots of the confusion that contemporary religious discourse suffers from. The Qur'an is always the original realm of discourse for everything that was later integrated into the system—or rather systems—of Islamic thought through layers of interpretation and exegesis that shaped concepts and coined terms. The root word *shar'* appears in the Qur'an only five times: once in the form of a description in an adverbial phrase *asshurra<sup>an</sup>*—describing the appearance of fish on the Sabbath for the Banū Isrā'īl (Q. 7: 163), once in the infinitive form in the object position as *shir'a*, and only once in the form that is commonly used today as “Shari'a.” Additionally, the root word appears twice in the form of a verb, and in both cases, it means to manifest or make clear the *dīn* after it had been hidden and unknown. It is God who has “laid down for you (people) the same commandment that He gave Noah, which We have revealed to you (Muhammad) and which We enjoined on Abraham and Moses and Jesus.”<sup>3</sup> (Q. 42: 13).

The original linguistic use of the word “Shari'a” is derived from clearing a path to water for animals to drink, and from this, the places where animals descend to water are called *sharī'a*, *shirā'*, and *mashra'a*. Therefore, the meaning of God “has laid down for you the same commandment,” is that He, the Exalted, has shown you a path and prescribed for you a method. Hence, the Qur'an mocks the polytheists, for they believe they are on the correct path, while in fact, they are misguided: “How can they believe in others who ordain for them things which God has not sanctioned in the practice of their faith?” (Q. 42: 21).

It is only natural for religion to be a *shir'a* in the sense of a method, a path, or a road that a person follows. Therefore, the essence and origin of religion are one, despite the natural differences among people. These differences should not lead to fighting or bloody conflicts. The Jews are to follow their Torah, and the Christians are to follow their Gospel. God says: “But why do they come to you for judgement when they have the Torah with God's judgement,” and He says, “So let the followers of the Gospel judge according to what God has sent down in it. As for Muslims, they

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<sup>3</sup> The translations of all cited verses from the Qur'an are based on Abdel Haleem, M. A. S. (2005). *The Qur'an: A new translation*. Oxford: Oxford University Press.

are to follow their own book, as God says: “We have assigned a law and a path to each of you. If God had so willed, He would have made you one community.” (Q. 5:43, Q. 5:47, & Q. 5:48 consecutively). Commentators have said: “*shir‘a* means religion, and *minhāj* means a path. It has also been said that both *shir‘a* and *minhāj* together mean the path, and here, the path refers to the religion (see *Lisān al-‘Arab*).” Therefore, when God addresses Muḥammad (peace be upon him) saying, “Now We have set you (Muhammad) on a clear religious path (Shari‘a), so follow it—” (Q. 45:18), it is a command to follow the path, the “Shari‘a” that God has established for him, and not to follow the laws of desires, which are followed by the polytheists “who lack (true) knowledge.” This means that polytheism is a “Shari‘a” of its own, and Islam is another “Shari‘a” of command. Similarly, Judaism is a “Shari‘a,” Christianity is a “Shari‘a,” and customs and traditions are also considered a “Shari‘a.”

In the Qur’an, there is no distinction between *‘aqīda* and “Shari‘a,” as “Shari‘a” refers to the religion in Qur’anic usage. This usage remained evident until the time of Ibn Rushd (Averroes) (d. 595/1198), who viewed “Shari‘a” and reason as being like foster sisters, meaning that “Shari‘a” here refers to religion, not legal rulings. In Şūfī discourse, there is always a comparison between “Shari‘a” and *ḥaqīqa*, with the distinction being that “Shari‘a” is a revelation that is based on transmission (narration), while *ḥaqīqa* relies on witnessing and observation through the Şūfī ascent journey (*mi‘rāj*). The distinction between “Shari‘a” and *‘aqīda*, where the concept of “Shari‘a” became limited to legal rulings, emerged in the context of contemporary problems. It is true that some proponents of establishing a religious state based on the implementation of “Shari‘a” law theoretically differentiate—at least in principle—between “Shari‘a” and *fiqh*, or between what is fixed and what is variable in the structure of the Islamic legal system. However, this distinction ultimately leads to limiting the concept of “Shari‘a” that must be applied to the *ḥudūd* mentioned in the Qur’an, such as the cutting off of hands for thieves, and the flogging of adulterers, along with the punishment of stoning for married men and women guilty of adultery—a punishment not mentioned in the Qur’an. Similarly, there is no mention of the punishment of flogging for alcohol consumption. It has been said that the punishment of *rajm* (stoning) is mentioned in a verse abrogated from the recited text (*mansūkha[t] al-*

*tilāwa*), though its ruling remains effective, which is difficult to accept easily, especially considering the reluctance to critically assess the narrations claiming that the Prophet (peace be upon him) carried out such a punishment on a woman. It is also worth considering the possibility that this punishment was a continuation of customs and traditions that existed before the legislation of “flogging” As for the punishment for “alcohol consumption,” there is no disagreement that it is an *ijtihad* (independent reasoning) by Muslims, meaning that it is a man-made punishment.

Restricting the concept of Shari‘a to the application of *ḥudūd* (punishments)—which, according to the Prophet’s recommendation, should be avoided in cases of doubt—is not just a conclusion. The laws of inheritance, marriage, divorce, guardianship, etc., are already enforced and applied literally in most Islamic countries. Unfortunately, these are not applied with an open-minded Qur’anic approach, meaning one that aligns with the overarching *maqāṣid* (objectives) of the Qur’an. Instead, they are applied based on jurisprudential interpretations and exegeses that reflect traditions and laws of societies that are outdated. One only needs to look at the harsh restrictions imposed on a woman’s right to divorce even when living together becomes impossible, her limited ability to set conditions in the marriage contract, and her right to work.

The “rulings” (*aḥkām*) found in the Qur’an make up no more than one-sixth of its verses. So, is Shari‘a confined to this small framework? And does the “creed”—which some advocates of a religious state consider equal to Shari‘a—form the foundation of Shari‘a, while it is spread throughout the structure of the Qur’an, in its stories, parables, lessons, and admonitions? In other words, in its grand literary structure? These people have reversed the situation, making the structure a foundation for some of its margins and minor aspects. The rulings, by nature, are subject to development and even abrogation. They cannot be on the same level as the structure that is not subject to abrogation or development. What God prescribed for Muhammad—Islam—is the same as what He prescribed for the messengers before him. Religion is one, but the rulings differ depending on time and place. The theoretical distinction that some make between “Shari‘a” and “*fiqh*” (jurisprudence) quickly disappears in practice in favor of *Fiqh*, with its principles, branches, analogies, assumptions, and commentaries. And when it becomes “Shari‘a” that must be applied, the jurist of the time—or rather the student of *Fiqh*—becomes a reference for

fatwas on everything, from issues of menstruation and post-natal bleeding to matters of democracy and human rights, not to mention cloning and globalization. In short, the mufti becomes a reference for science, culture, literature, arts, technology, politics, economics, sociology, psychology, and philosophy. Is there a solution in Shari‘a for every problem and an answer to every question? Doesn’t this assumption ultimately lead to restricting discussion within the circle of “interpretation” and “counter-interpretation”?

### **Heritage and the Problem of Interpretation and Counter-Interpretation**

The concern about the issue of “returning” to “heritage” (*al-‘awda ilā al-turāth*) has been, and remains, the dominant preoccupation in the majority of responses within Arab discourse to the questions raised by successive defeats. Three main approaches to dealing with heritage have emerged from this fundamental concern: The most prominent approach, especially from a popular and public perspective, is the revivalist Salafī trend. This approach views heritage, particularly Islamic religious heritage, as a repository of solutions. It sees it as an expression of a distinct “identity” and a realization of a unique civilizational project that alone can rescue the nation from its current crisis and achieve the desired renaissance. The second approach advocates a complete break with heritage. This viewpoint considers heritage to be harmful and responsible for some aspects of the current crisis. It suggests that the solution lies in analyzing or deconstructing this heritage in order to create an epistemological rupture that frees us from its harmful influences. Naturally, a third approach has emerged: the renewal of heritage. This is a syncretic trend, although it attempts to present itself as one of “reconciliation” between heritage and modernity by renewing heritage through reinterpreting it to meet contemporary demands. What interests us in this discussion is the methodology of the “renewers,” especially in terms of the conflict between their conclusions and the rigid discourse of the Salafī traditionalists, despite their agreement on the comprehensive authority of religious texts.

For example, when the issue of women’s rights in Islam is raised, defenders of Islam—often the renewers—turn to “Qur’anic texts” to demonstrate that Islam granted women rights fourteen centuries before

modern laws. In this defence, emphasis is placed on texts that affirm equality, highlighting them. Meanwhile, traditional Salafis argue that this equality pertains to rewards and punishments in the afterlife; it is a religious, not social, equality. However, this equality is still conditioned by affirming the natural differences between men and women, particularly the biological distinctions. In affirming these differences, they also cite the Qur'an, without recognizing the context of the Qur'an's address to the Arabs. In this disregard for context, both interpretation and counter-interpretation rely on semantic manipulation of religious texts—whether from the Qur'an or the *Ḥadīth*—without considering the nature of these texts in terms of history, context, composition (in the sense of structure and formation, not human authorship), language, and meaning. Does this not call for the researcher to develop a method of understanding the texts that is capable of freeing Islamic thought from the crisis of interpretation and counter-interpretation, which has a long history in practice?

It may be useful to present just one example that reveals the dominance of the approach of interpretation and counter-interpretation in our contemporary religious culture. This is done on a pragmatic basis that disregards context at all levels, in addition to the overlap between these levels. Here, we present the *fatwa* (religious ruling) that was highlighted by the French news agency and published by Kuwaiti newspapers, quoting Shaykh 'Abd al-'Azīz bin Bāz, the head of the Council of Senior Scholars and the General Presidency of Scholarly Research and *Iftā'* in Saudi Arabia, entitled "Women's Work is One of the Greatest Means to Adultery":

Taking a woman out of her home, which is her kingdom and her vital foundation in this life, removes her from her innate nature and the way God has created her. The call for women to enter fields that belong to men is a serious threat to Islamic society. One of its greatest consequences is the mixing of men and women, which is one of the greatest means leading to adultery, something that destroys society and undermines its values and morals.<sup>4</sup>

Undoubtedly, the interest of the French news agency in publishing this fatwa is not devoid of ideological significance within the broader campaign to distort the image of Islam and Muslims in Western media

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<sup>4</sup> *Rūz al-Yūsuf* magazine, issue 3553, July 15, 1996, p. 25.



in general. In the context of the Taliban's practices in Afghanistan against women—where they made the issue of women's "veil" and confining them to the home a top priority in their reforms—this fatwa gains particular importance in the aforementioned distortion efforts. Therefore, it became necessary for a prominent figure representing the Islamic renaissance (*al-nahḍa al-Islāmiyya*) movement to respond to this dangerous fatwa, which poses a direct threat to the image of "civilized" Islam (*al-Islām al-mutaḥaḍḍir*) that some Islamic factions claim to advocate. In this response, the writer draws on the opinions of Shaykh Muḥammad Rashīd Riḍā, a disciple of Shaykh Muḥammad 'Abduh and the editor of *al-Manār* magazine, from which the Imam's ('Abduh's<sup>5</sup>) commentary emerged with Riḍā's notes. Riḍā observed that he dedicated a chapter in his book *Ḥuqūq al-Nisā' fī'l-Islām (Women's Rights in Islam)* to the participation of women and men in religious, social, and political activities. In the Beirut edition, Shaykh Muḥammad Nāṣir al-Albānī (1914–1999), a scholar of contemporary Salafism, provided commentary on the book. He was displeased with both the title and the chapter and added a footnote on the first page stating: "This generalization is clearly flawed and is, in fact, invalid as it contradicts the generality of the verse 'And stay in your houses' (*wa-qarn fī buyūtikunn*) and what was practiced by the women of the pious predecessors (*salaf ṣāliḥ*), who refrained from involvement in politics. The author of the response counters Shaykh al-Albānī's commentary, stating:

In this footnote, the great *ḥadīth* scholar made two mistakes: First, he spoke about the generality of the verse 'And stay in your houses,' which is specifically addressed to the Prophet's wives, as made explicit in the Qur'an. Second, his claim that the women of the early pious generations did not involve themselves in politics is contradicted by the events of the Prophet's era and the rightly-guided caliphs, who are considered the best of the predecessors.<sup>6</sup>

The verse at the center of interpretive controversy is: "And stay at home, and do not flaunt your finery as they used to in the pagan past; keep up the prayer, give the prescribed alms, and obey God and His Messenger.

<sup>5</sup> All mentions of the 'Imam' hereafter refer to Muḥammad 'Abduh.

<sup>6</sup> Fahmī Huwaydī, "Normalizing the Relationship of Women with Society," *Al-Ahrām* newspaper, July 9, 1996.

God wishes to keep uncleanness away from you, people of the (Prophet's) House, and to purify you thoroughly." (Q. 33:33). This verse is part of a group of verses that regulate the relationship between the Prophet and his wives, beginning with giving them the choice between separation with grace (divorce) if they desired worldly life and its adornments, or staying under the Prophet's care with the promise of great reward in the afterlife. It ends by instructing them to remain in their homes and remember what is recited in their houses of " God's revelations and wisdom" (Q. 33:28–34). Without a doubt, the context is one directed at the Prophet's wives, but the question remains regarding the "ruling"—the command to remain in the house. Is it exclusive to the Prophet's wives, or should it be applied universally? The question in the language of jurists and interpreters is whether the relevance lies in the specific cause (the reason for revelation) or in the generality of the wording. It is clear that Shaykh al-Albānī prioritizes the generality of the wording, while our writer (Fahmī Huwaydī<sup>7</sup>) focuses on the specificity of the cause. What is also clear is that in his preoccupation with defensive interpretation made him (Huwaydī) overlook the remaining commands in the verse, "Do not flaunt your finery as they used to in the pagan past; keep up the prayer, give the prescribed alms, and obey God and His Messenger." These are commands that are difficult to confine to a specific group. The focus on the address at the beginning of Q. 33:32, "O wives of the Prophet, you are not like anyone among women," while neglecting the overall narrative context of the sequence of verses, seems particularly responsible for the potential for semantic manipulation leading to contradiction and conflict.

Ibn Kathīr (1301–1373), in his *tafsīr* (Qur'anic exegesis), holds that the command to remain in the houses applies to all women and is not limited to the Prophet's wives. He shifts the question of generality versus specificity from the command to remain in the house to the concept of the "People of the House" (*Ahl al-Bayt*), about whom God intends to remove impurity: Does this refer only to the Prophet's wives, or does it also include his broader family, especially Fāṭimah, 'Alī, and their children? The disagreement discussed by Ibn Kathīr regarding the interpretation

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<sup>7</sup> Fahmī Huwaydī (1937–) is an Egyptian journalist and Islamic reformist thinker writing on Islam, democracy and governance. In this section of paper, Abū Zayd uses the phrase 'our writer' to present Huwaydī's views.

of this term undoubtedly reflects historical disputes between the “Sunni” and “Shi’a,” which we will not delve into here. The point here is that the use of the “generality vs. specificity” binary as a tool for interpretation and counter-interpretation is not a productive method for uncovering meaning. This binary—like other interpretive dualities such as “abrogating and abrogated” and “clear and ambiguous”—belongs to the classical interpretive tools that can generate both meaning and its opposite.

In addition to the ineffective interpretive tools, both our writer and Shaykh al-Albānī use “historical evidence” to support their respective interpretations. Al-Albānī denies women’s participation in political life, while our writer affirms it. There is no doubt that historical reality, especially the Battle of the Camel, involving ‘Alī ibn Abī Ṭālib on one side and Ṭalḥa, al-Zubayr, and ‘Ā’isha on the other, confirms women’s participation in political conflict. But the absent question is: Does ‘Ā’isha’s involvement in the battle against ‘Alī constitute a violation of the Qur’anic command to remain in the house, especially if the ruling was specific to the Prophet’s wives? Or did ‘Ā’isha understand that the command to stay in the house—unlike the other commands, of course—was temporary and specific to the Prophet’s lifetime, meaning it was only “specific” in a temporal sense? Attempting to answer this question presents us with two possibilities: either the command was “temporary,” or ‘Ā’isha committed the sin of “leaving” her home not only in a political sense but also religiously. In either case, the crisis of interpretation and counter-interpretation remains, a crisis that stems from—as we will analyze further—the treatment of the Qur’an as an entirely transcendent text, detached from its history and the reality in which it was revealed. Our writer continues citing Qur’anic texts that affirm the concept of equality between men and women.

It is natural for enlightened individuals to defend women’s right to work and to find a legitimate justification for the interaction between men and women, an interaction that cannot be avoided in work relationships. In the context of the Kuwaiti National Assembly approving by a majority of 95% a law prohibiting “mixing” in all educational institutions—from early stages to university education—the author emphasizes the need to differentiate between preventing mixing out of respect for traditions and

prohibiting it on a religious basis.

The claim that “separation is a religious obligation” and that “opposing it is a call for the violation of God’s commands” and that “anyone advocating for mixing is in fact calling for disobedience to God and His Messenger and opposing His Book” is something that cannot be left unchallenged. In its initial sense, this issue may pertain only to specific societies. However, when framed in such religious terms, it concerns all Muslims universally. Therefore, we must examine this matter carefully and place it within its proper legal framework as we perceive it to be correct. We do not know of any religious text from the Qur’an or Sunnah that explicitly calls for the prohibition of men and women mixing. Among our contemporary scholars, we hardly find any respected jurists advocating for this, except for scholars of the Salafi school in our time, most of whom we respect and consider sincere and devoted to the faith. However, their approach is marked by extremism, which scholars from other jurisprudential schools, especially the religious revival movement represented by figures like Jamāl al-Dīn al-Afghānī (1838–1897), Muḥammad ‘Abduh, Rashīd Riḍā, Maḥmūd Shaltūt (1893–1963), Muḥammad ‘Abdallāh Darāz (1894–1958), and more recently the two scholars Muḥammad al-Ghazālī (1917–1996) and Yūsuf al-Qaraḍāwī (1926–2022), do not agree with. Only Salafī jurists have chosen a particularly strict stance toward women, perhaps because they represent the most jurisprudential school influenced by Arab traditions that downplayed women’s role, reduced their activity and vitality, and considered them a source of temptation that must be carefully guarded against, surrounded by a dense barrier of warnings and precautions.<sup>8</sup>

After citing the Qur’anic texts that extremists rely on—specifically the verses concerning the Prophet’s wives, which have already been discussed—and interpreting them using the aforementioned method, the writer presents their evidence from prophetic *ḥadīths*, revealing the flaws in their interpretations. This way, the interpretation of the *ḥadīths* also

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<sup>8</sup> Fahmī Huwaydī, “With Teachings, Not Decrees,” *Al-Ahrām* newspaper, June 25, 1996. Among the key sources relied upon by the writer: Yūsuf al-Qaraḍāwī, *Fatāwā mu‘āşira: min hady al-Islām* (Cairo: Dār al-Wafā’, 1993), vol. 2, p. 286; Muḥammad al-Ghazālī, *Al-Mar’a bayn al-rakūd wa al-tajrīd* (Cairo: Dār al-Shurūq, 1990); ‘Abd al-Ḥalīm Abū Shuqqa, *Al-Mawsū’a fī taḥrīr al-mar’a fī ‘aşr al-risāla* (Kuwait: Dār al-Qalam, 1990).

relies on differences over “meaning” without addressing the “authenticity” of the *ḥadīths* in terms of chain of transmission (*sanad*) and text (*matn*). Furthermore, there is no discussion of whether the narrated text, even if it is authenticated both in chain and text, is a legal text in the religious sense or merely descriptive of the traditions of the time. In other words, are these texts attributed to the Prophet, assuming their authenticity in both chain and text, merely part of “customs and traditions,” and thus not obligatory outside their historical and social context? Or are they part of legislative traditions? It should be noted that the justification for the legitimacy of mixing is conditioned on it being a collective interaction without “seclusion.” This interpretation implicitly accepts the validity of the saying attributed to the Prophet, “When a man and a woman meet in private, the third one present is Satan,” and even treats it as a legislative statement

### **The Contextual Reading Methodology**

The methodology of renewal is fundamentally based on what is called the “contextual reading” method of texts. This approach is not entirely new; rather, it is a development of traditional methods from the science of *usūl al-fiqh* (principles of Islamic jurisprudence) on one hand, and a continuation of the efforts of the pioneers of the Islamic renaissance—especially Imam Muḥammad ‘Abduh (1849–1905) and Shaykh Amīn al-Khūlī (1895–1966)—on the other hand. The methodology relies on the disciplines of *‘ulūm al-Qur’an* (Qur’anic sciences), particularly the sciences of *asbāb al-nuzūl* (occasions of revelation) and *nāskh wa mansūkh* (abrogating and abrogated verses), in addition to *‘ulūm al-lughā* (linguistic sciences) as essential tools for interpretation and deriving rulings from texts. These tools are among the most important in the “contextual reading” methodology. While the scholars of *uṣūl al-fiqh* emphasize the importance of *asbāb al-nuzūl* to understand the meaning, contextual reading views the issue from a broader perspective: the overall historical and social context—specifically the 7th century CE—in which the revelation took place. This is because this context allows the researcher to determine, within the framework of rulings and legislations, for example, what originates from the divine revelation and what stems from pre-Islamic religious or social customs. Additionally, one

can distinguish between what Islam fully accepted and developed, such as pilgrimage (*ḥajj*), and what it accepted partially, suggesting the need for its further development for Muslims, such as the issues of slavery, women's rights, and wars.

While the scholars of *uṣūl al-fiqh* believe that *asbāb al-nuzūl* does not imply the temporality of rulings nor restricts them to their specific causes—establishing the principle of “considering the general wording rather than the specific cause”—the contextual reading methodology makes a distinction between the “meanings” and the historical connotations derived from the context on one hand, and the “implication” that the meaning conveys in its historical and social context of interpretation on the other hand. This distinction is crucial, provided that the implication stems from the meaning and is closely tied to it, just as a result is tied to its cause, and not a reflection of the interpreter's personal desires or an imposition upon the “meaning” itself.

In addition to the broader socio-historical context of the pre-revelation era, there are several other levels of context that must be considered in the proposed methodology. Some of these levels include:

### ***The Context of the Order of Revelation***

This refers to the chronological order in which the revelation was revealed, which differs from the order in which the chapters and verses are recited in the Qur'an. Traditionally, interpreters have tended to interpret the Qur'an according to the latter order, which overlooks the fact that the meanings of Qur'anic words evolved over the 20 years during which the revelation was revealed. The same word in different contexts may not carry the same meaning. This does not diminish the importance of the “recitation order”; rather, attention must be given to it in terms of its aesthetic and psychological impact, as it is the order in which the text has been received by the general audience. While reading according to the order of revelation is essential for uncovering meanings and connotations, reading according to the recitation order reveals the “implication” and impact. The contextual reading methodology takes both orders into account in a comprehensive and integrative approach, without neglecting the differences between them. The historical reading can reveal the

development of connotations within the structure of the text, such as from the Meccan to the Medinan periods, but it cannot uncover the overall connotative impact of the current structure of the Qur'an. Meanwhile, the sequential reading used by interpreters might succeed in revealing the overall connotative impact but often overlooks the issue of connotative development. The task of the renewal methodology is to combine both the historical and sequential dimensions in the interpretation process.

### *The Context of "Narrative"*

This refers to a broader context that surrounds what might be considered a legislative command or prohibition, which could appear in a narrative context or as a description of the conditions of previous nations. It might also appear in response to critics, attackers, or mockers of the Qur'an or Muhammad, whether they were from the polytheists of Mecca or from the People of the Book. The importance of paying attention to the narrative context lies in enabling the scholar to distinguish between what was revealed as essential legislation and what was revealed in the context of polemics<sup>9</sup> (Al-Zarkeshi, 1972), description, threat, warning, or moral lessons, etc.

<sup>9</sup> The polemical context, as will be clarified through examples, refers to responding to critics and mockers using their own logic but in reverse, exposing the internal inconsistency of their argument. Imam al-Shāfi'ī noticed this context in his interpretation of the verse: "(Prophet), say, 'In all that has been revealed to me, I find nothing forbidden for people to eat, except for carrion, flowing blood, pig's meat- it is loathsome- or a sinful offering over which any name other than God's has been invoked.'" (Q. 6:145). He observed that since the disbelievers prohibited what Allah allowed and allowed what Allah prohibited, the verse came to oppose their purpose, as if it said: "Nothing is forbidden except what you have prohibited, and nothing is allowed except what you have allowed." Al-Shāfi'ī then provided a clarifying example: it is as if someone tells you, "Don't eat sweets today," and you respond, "I will only eat sweets today," with the intent of opposition rather than literal affirmation. Quoted from Badr al-Dīn Muḥammad ibn 'Abd Allāh al-Zarkashī (d. 794/1392), *Kitāb al-burhān fī 'ulūm al-Qur'ān* (Beirut: Dār al-ma'rifa, 3rd ed., 1972, Vol. 1, pp. 23-24).

### ***The Level of Linguistic Structure***

This is more complex than the grammatical structure, which interpreters have traditionally focused on. It involves analyzing relationships such as “separation” or “connection” between grammatical sentences, as well as “advancement and delay,” “implicit and explicit mention” (omission and inclusion), and “repetition,” among other key elements that reveal different levels of meaning. These are the semantic elements that ‘Abd al-Qāhir al-Jurjānī (d. 1078) discussed in his important work *Dalā’il al-i’jāz* under the concept of *Naẓm* (structure). We have analyzed these in the light of the science of “stylistics” in an independent study (The Concept of Nazm, 1984). Beyond this comes the level of grammatical and rhetorical analysis, which goes beyond traditional rhetoric and utilizes tools from the sciences of “discourse analysis” and “textual analysis” in their modern developments. This application reveals deeper and more complex levels in the divine discourse, which we do not have the space to elaborate on here. As for the second foundational text, the prophetic Sunna, it is essential to combine the critique of both *matn* (content) and *isnād* (chain of transmission). It is also important to benefit from all the possibilities offered by modern methods of textual criticism and documentation in linguistics and stylistics. Most importantly, it is necessary to open the door for *ijtihād* (independent reasoning) to distinguish between what belongs to the Prophet’s sayings as “Sunna” in its technical sense (i.e., obligatory to follow as he is the Messenger and Prophet), and his ordinary sayings, which can be accepted or left behind as he was also a human being.

From the perspective of the aforementioned methodology, we analyze here the texts related to women and their rights—particularly in the Qur’anic discourse—through a historical and critical analysis. We will find that many of the rulings that critics of Islam and Arab-Islamic culture rely on in the issue of “women’s rights” were historically not legislations brought by the Qur’an. Therefore, in order to truly understand Islam’s stance on the issue of “human rights” in general and “women’s rights” in particular, it is necessary to conduct a historical comparison between the status of “women’s rights” before Islam and the new rights legislated by Islam. Between the “pre-Islamic” period and the “post-Islamic” period, there is a shared space that represents the point of intersection between the old



and the new. This space serves as a bridge or a passage through which the new establishes its cognitive acceptance in the consciousness of the people whom the revelation addresses. This analysis of the differences between the new message and the transitional zone is what is referred to as the process of restoring the original meaning of the discourse by replanting it in the historical context that it has been separated from for fourteen centuries, leading people to mistakenly believe that everything the Qur'an mentioned about women is legislation when it is not.

We also critically address the ideological manipulation of religious meaning concerning women's rights in some trends of Islamic thought. These manipulations primarily followed the path of justifying the "social" context of the Bedouin society, which was hostile not only to women and their rights but also to the very social existence of human beings, reducing them to mere cogs in the institution of the "tribe" This institution has taken various forms throughout history, and some of its manifestations still exist in certain contemporary Arab societies. This manipulation of meaning against its original context has dominated the social and political history of the Arab nation, except for a few exceptions that must be highlighted to absolve Islam from the betrayal of its values by its followers. This occurred in the context of the dominance of various forms of military dictatorships that inherited the institution of the "tribe" and breathed new life into it. While the pioneers of the renaissance era attempted to restore the context of meaning to align it with the implications of the era and history—without contradicting the "original meaning," i.e., the "contextual" meaning—the political, social, and cultural failure, or rather the stagnation, of the renaissance project has reopened the discussion on issues previously addressed. It is illogical to merely revive or recall previous answers, as the context has changed, and the challenges are no longer the same. Therefore, it is necessary to propose a contextual reading methodology to escape the interpretive crisis that religious thought is still trapped in.

### **The Polemical and Descriptive Contexts**

By closely analyzing the religious texts related to women, particularly in the Qur'an, we can confidently assert that "equality" between men and

women represents a fundamental objective of the Qur'anic discourse. The texts on this matter do not allow for interpretations that go beyond their direct meanings. It is important to highlight that, unlike the Torah, for instance, the Qur'an does not portray Eve—the model for womankind—as the tool of Satan to tempt Adam into eating from the forbidden tree in disobedience to God's command. The Qur'an is clear in its equal treatment of Adam and Eve regarding responsibility and punishment. However, Muslim interpreters incorporated the biblical version of the story into their explanations and attributed the blame for the original sin to Eve.<sup>10</sup> As a result, women, in the discourse of extremists throughout periods of backwardness, have been labeled as symbols of sin and impurity, and the gateway for Satan. This led to the notion that isolating and concealing women from social interaction was the solution, not only to protect them from the temptations of Satan but to protect men as well. With the exception of some jurisprudential statements and interpretations, we observe that Islamic thought, as a whole, has been primarily concerned with the human being and their relationship with God and the world from both existential and epistemological perspectives, without taking gender into consideration.

However, because the Qur'an was revealed to a society in which distinctions between men and women, or between males and females, were part of their culture and social system, it is natural that these distinctions are reflected in the Qur'an's debates with them. But the mistake lies in treating these polemical expressions as if they were legislative rulings brought by Islam. This explains the abundance of fatwas and erroneous interpretations arising from the confusion between polemical and legislative contexts. Equality between women and men is a core objective of the Qur'an in two key aspects. The first is equality in the origin of creation from a "single soul." Unlike the Torah, which considers Eve a part of Adam, created from one of his ribs—later referred to as the "crooked rib" that constantly requires correction through discipline—the Qur'an emphasizes equality. The second aspect is equality in religious duties and the consequences that follow, whether reward or punishment, as seen in the following verses:

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<sup>10</sup> See the author's *Al-Mar'a fi khaṭāb al-azmah* (Cairo: Dār nuṣūṣ lil-Naṣr, 1994), Introduction: "*Ḥawwā bayn al-dīn wa'l-ustūra*," pp. 11-17.

1. "People, be mindful of your Lord, who created you from a single soul, and from it created its mate, and from the pair of them spread countless men and women far and wide. Be mindful of God, in whose name you make requests of one another. Beware of severing the ties of kinship: God is always watching over you." (Q. 4:1)
2. "It is He who created you all from one soul, and from it made its mate, so that he might find comfort in her." (Q. 7:189)
3. "To whoever, male or female, does good deeds and has faith, We shall give a good life and reward them according to the best of their actions." (Q. 16:97)
4. "But anyone, male or female, who does good deeds and is a believer will enter Paradise, and they will not be wronged by as much as the dip in a date stone." (Q. 4:124)
5. "Whoever does evil will be repaid with its like; whoever does good and believes, be it a man or a woman, will enter Paradise and be provided for without measure." (Q. 40:40)
6. "Their Lord has answered them: 'I will not allow the deeds of any one of you to be lost, whether you are male or female, each is like the other. I will certainly wipe out the bad deeds of those who emigrated and were driven from their homes, who suffered harm for My cause, who fought and were killed. I will certainly admit them to Gardens graced with flowing streams, as a reward from God: the best reward is with God.'" (Q. 3:195)
7. "The believers, both men and women, support each other; they order what is right and forbid what is wrong; they keep up the prayer and pay the prescribed alms; they obey God and His Messenger. God will give His mercy to such people: God is almighty and wise. God has promised the believers, both men and women, Gardens graced with flowing streams where they will remain; good, peaceful homes in Gardens of lasting bliss; and—greatest of all—God's good pleasure. That is the supreme triumph." (Q. 9:71-72)

As for the polemical texts that appear to distinguish between male and female, they were revealed in the context of responding to the Arab polytheists who attributed daughters to God, claiming that the angels were the daughters of Allah. This belief likely stemmed from their ancient religious traditions, remnants of which still existed when the Qur'an was revealed. The names of the deities that the Arabs worshiped,

as mentioned in the Qur'an—*al-Lāt*, *al-'Uzzā*, and *Manāt*—are feminine names. The evidence that this is a polemical argument lies in how the Qur'an addresses both the worship of female deities and the attribution of female angels to God in a single context:

(Disbelievers), consider al-Lat and al-Uzza, and the third one, Manat --are you to have the male and He the female? That would be a most unjust distribution! --these are nothing but names you have invented yourselves, you and your forefathers. God has sent no authority for them. These people merely follow guesswork and the whims of their souls, even though guidance has come to them from their Lord (Q. 53:19–23).

It is logical to assume that pre-Islamic Arab society had long passed the stage of matriarchy and had become a patriarchal society. The worship of female deities contradicted the prevailing social norms, where females were viewed as inferior beings that brought dishonor, as is evident from the practice of burying baby girls alive. Therefore, the Qur'an considered the Arabs' insistence on attributing females to God as a form of disdain, especially since they based this attribution on a deeply pagan belief that there was a "kinship" between God and the *jinn* (Q. 37: 158), which led to the birth of angels (Q. 37: 151-152). It was natural for the Qur'an to respond polemically by saying: "In His place the idolaters invoke only females, and Satan, the rebel." (Q. 4: 117).

Thus, it is a mistake to interpret the Qur'anic discourse in this context as demeaning to females. How could it be, when the Qur'an condemns the Arabs' practice of burying their daughters alive, whether out of fear of poverty or disgrace?

1. "They assign daughters to God --may He be exalted!--and the (sons) they desire to themselves. When one of them is given news of the birth of a baby girl, his face darkens and he is filled with gloom. In his shame he hides himself away from his people because of the bad news he has been given. Should he keep her and suffer contempt or bury her in the dust? How ill they judge!" (Q. 16:57–59).
2. "Yet they assign some of His own servants to Him as offspring. Man is clearly ungrateful! Has He taken daughters for Himself from what He

creates and favored you with sons? When one of them is given news of the birth of what he attributes to the Lord of Mercy, his face darkens and he is filled with gloom—'Someone who is brought up among trinkets, who cannot put together a clear argument?'—and they consider the angels, God's servants, to be female. Did they witness their creation? Their claim will be put on record and they will be questioned about it." (Q. 43:15-19).

3. "Now (Muhammad), ask the disbelievers: is it true that your Lord has daughters, while they choose sons for themselves? Did We create the angels as females while they were watching? No indeed! It is one of their lies when they say, 'God has begotten.' How they lie! Did He truly choose daughters in preference to sons? What is the matter with you? How do you form your judgements? Do you not reflect?" (Q. 37:149-155).
4. "What? Has your Lord favoured you people with sons and taken daughters for Himself from the angels? What a monstrous thing for you to say!" (Q. 17:40).

When we look beyond the texts that appear in a polemical context, we find other texts presented in a descriptive context. For example, what is narrated on the tongue of Mary's mother when she gave birth to her daughter occurs within a narrative context, which can be seen as an expression of the speaker's perspective. The situation was such that the wife of Imran—who had vowed to dedicate what was in her womb to God—thought that a female was not suitable for fulfilling the vow. However, the parenthetical phrase "And Allah knew best what she delivered" negates this assumption and doubt from the mother's side:

Imran's wife said, 'Lord, I have dedicated what is growing in my womb entirely to You; so accept this from me. You are the One who hears and knows all,' but when she gave birth she said, 'My Lord! I have given birth to a girl'— God knew best what she had given birth to: the male is not like the female—'I name her Mary and I commend her and her offspring to Your protection from the rejected Satan.' (Q. 3: 35-37).

The same applies to the concepts of the Arabs, such as the verse:

The love of desirable things is made alluring for men– women, children, gold and silver treasures piled up high, horses with fine markings, livestock, and farmland– these may be the joys of this life, but God has the best place to return to (Q. 3:14).

Another example of descriptive Qur'anic language, which has been interpreted as legislative, is the issue of male guardianship (*qiwāma*) over women. This has been understood to mean that men are responsible for women, with all the responsibilities that come with authority, including punitive actions such as abandoning or striking the wife, as mentioned in the verse:

Husbands should take good care of their wives, with (the bounties) God has given to some more than others and with what they spend out of their own money. Righteous wives are devout and guard what God would have them guard in their husbands' absence. If you fear high-handedness from your wives, remind them (of the teachings of God), then ignore them when you go to bed, then hit them. If they obey you, you have no right to act against them: God is most high and great (Q. 4: 34).

Upon examining the narrations provided by al-Suyūṭī (d. 911/1505) regarding the reason for the revelation of this verse, we realize that the revelation considered the conditions of the people being addressed. One narration mentions a woman who came to the Prophet (peace be upon him) complaining that her husband had slapped her, to which the Prophet responded, "He has no right to do that." In another narration, the Prophet ruled that the woman had the right to retaliate by slapping her husband in return. If this narration is accurate, it reflects the principle of retribution (*qiṣāṣ*) mentioned in the verse:

In the Torah We prescribed for them a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, an equal wound for a wound: if anyone forgoes this out of charity, it will serve as atonement for his bad deeds. Those who do not judge according to what God has revealed are doing grave wrong (Q. 5: 45).

The Prophet's rejection of the husband's action clearly affirms the original principle of "equality" in Islam. However, because the people being addressed were not yet capable of fully accepting this equality, the verse of guardianship was revealed.<sup>11</sup> But the question remains: Does the verse legislate guardianship, or is it merely describing the prevailing reality of the pre-Islamic era?

It is easy for some to infer—something that has indeed happened—that the apparent meaning of "God has given to some more than others" suggests that *qiwāma* is based on a divine, absolute preference of the male gender over the female gender, thus turning guardianship into an unquestionable divine ruling. However, when we consider the broader Qur'anic context regarding the concept of divine "preference" of some over others, or the elevation of some by degrees over others, it becomes clear that this refers to the observable social and economic differences among people. These differences are governed by the laws of social dynamics, or what the Qur'an refers to as divine "laws" that can change due to "If God did not drive some back by means of others" (Q. 2: 251). According to Ibn Khaldūn (d. 808/1406 CE), the founder of the disciplines of philosophy of history and sociology, this description is meant for reflection and learning. Notice the wording in the verse: "See how We have given some more than others—but the Hereafter holds greater ranks and greater favours." (Q. 17: 21). If we were to understand that the differences in wealth among people are divine decrees mandating poverty for some and wealth for others, then it would not be appropriate for the Qur'an itself to urge the distribution of wealth and resources, "so that they do not just circulate among those of you who are rich." (Q. 59: 7). Thus, we must understand that the divine elevation of some people over others is merely a descriptive expression—intended for reflection—of a reality that should be changed to achieve justice. It is not intended to be a reason for some people to mock or demean others, as the "*lām*" letter in the verse is not for causality but for the outcome (*lām al-ʿāqiba*). This means that mockery, humiliation, and all forms of insult are the inevitable consequences of extreme social and economic disparity. Look at the context of the verse:

<sup>11</sup> Jalāl al-Dīn al-Suyūṭī, *Asbāb al-nuzūl*, on the margins of *Tafsīr al-jalālayn* (Beirut: Dār al-fikr, n.d.), p. 117.

Are they the ones who share out your Lord's grace? We are the ones who give them their share of livelihood in this world and We have raised some of them above others in rank, so that some may take others into service: your Lord's grace is better than anything they accumulate (Q. 43:32).

It is inconceivable that divine justice would intend for some to mock others because of wealth, status, or power, for "God commands justice, doing good, and generosity towards relatives." (Q. 16:90).

Thus, guardianship (*qiwāma*) is not so much a legislation as it is a description of a situation. The preference of men over women is not an absolute divine decree but rather a statement of a reality that is meant to be changed in order to achieve original equality. The "degree" that men have over women is a branch of the principle: "And due to them (i.e., women) is similar to what is expected of them, according to what is reasonable" (Q. 2:228), meaning it is based on the customs and traditions established in society. No one has ever said, nor should anyone say, that traditions and customs are eternal, absolute divine rulings. Even if we assume that the description is legislative, the meaning of *qiwāma* is not absolute, blind authority—meaning the man has control and unilateral decision-making power, with the woman required to offer absolute blind obedience. The meaning of *qiwāma* is to bear the economic and social responsibility. Is not Allah, the Exalted, described as "The Ever-Living, the Sustainer (*al-Ḥayy al-Qayyūm*)" (Q. 2:255, Q. 3:2, Q. 20:111), meaning the one who maintains and protects existence? He is also the one who maintains equity (*qişṭ*), i.e., justice (*adl*), as mentioned: "He upholds justice." (Q. 3:18). He is the one who "stands over every soul marking its action." (Q. 13:33). Therefore, *qiwāma* is a responsibility borne by the one who is capable—whether man or woman—or shared between them depending on the circumstances. Notably, the Qur'an links the reasoning for guardianship to two factors: preference and the ability to provide financially. However, it does not definitively specify who is preferred over whom, leaving it open to interpretation. This suggests that *qiwāma* can be shared or rotated between the two parties (Shahrūr, 1997). It may be useful to ask a rhetorical question in this context: would a man allow a woman to exercise all the rights of *qiwāma* over him—including the



authority to “advise,” “abandon in bed,” or “strike”—if she were the one working and supporting the family while he was unemployed?<sup>12</sup>

Likewise, we should include in the descriptive context what was narrated on the tongue of the hoopoe bird regarding the kingdom of Bilqis: “I found a woman ruling over the people, who has been given a share of everything— she has a magnificent throne” (Q. 27:23). Any conclusion that implies the prohibition of a woman ruling from this verse is invalid. Is it not enough that this woman—according to the Qur’an itself—ruled by *shura* (consultation)? She did not make decisions without consulting her advisors.<sup>13</sup>

<sup>12</sup> Fahmī Huwaydī, in his discussion of women’s involvement in public affairs and the issue of guardianship (*qiwāma*), states the following, based on discussions at a conference in Rabat on “Islam and Women’s Rights”:

On women holding public offices, the stated opinion was that there is no Islamic text prohibiting it. Regarding *qiwāma* and the degree to which men are said to be preferred over women, as mentioned in the Qur’an, it was said that this refers to the division of roles and to the responsibility of financial support borne by men. This preference does not mean that one person is better than the other, as God has favored some people over others in terms of wealth, yet no one claims that this diminishes the value of those with less wealth. In fact, some *ḥadīths* suggest that those with less wealth might be more virtuous before God than those who possess the wealth of *Qārūn*. On the issue of *nushūz* (rebellion), which some claim justifies the beating of women, it was emphasized that *nushūz* is to be addressed first with advice, second with abandonment, and only if neither works, a man may discipline his wife in a way that does not affect her face, cause her pain, or leave a mark. The scholars agreed that this should be equivalent to a light tap with a *miswāk* (a small tooth-cleaning stick). Shaykh Shaltūt explained that a woman’s *nushūz* is her deviation, and that the husband’s light discipline protects her from being taken to court and publicly shamed. Shaykh Muḥammad al-Ghazālī held that in Islamic understanding, *nushūz* occurs in two cases: when a woman becomes haughty towards her husband, to the point that she despises intimacy in the marital relationship, or when she allows a stranger, whom her husband dislikes, to enter his home without his knowledge or permission. Both cases require privacy and should not be dealt with outside the home, nor should a third party be involved.” From the article “Debate About Women!” *Al-Ahrām* newspaper, year 123, issue 34,087, November 1998.

<sup>13</sup> See Muḥammad Shahrūr, *Min al-ḥuqūq al-mughayyabah lil-mar’a (The Forgotten Rights of Women)*, mentioned above, p. 21. Shahrūr rightly notes that the hoopoe in the Qur’an did not object to the fact that she was a queen with guardianship over her people, but rather to their worship of the sun.

## Legislative Texts: Meaning and Implication

### *Marriage and Divorce*

The legislative texts concerning women are mostly found in the chapter dedicated to women's affairs, Surat An-Nisa'. This chapter is the sixth in the order of the Madinan suras, meaning those revealed in Madinah.<sup>14</sup> It was revealed after the Battle of Uhud in the fourth year of Hijra. Naturally, it addresses many issues related to women that arose after the defeat of the Muslims and the martyrdom of many of them, resulting in a significant number of orphans and widows. In this context, the regulation of "marriage and divorce" and "inheritance" was introduced. However, it is essential to understand these rulings considering the opening verses of the chapter, which emphasize the concept of original "equality" in the creation and formation of human beings, and in light of the principles of equality in religious and worldly duties and rulings. After opening the sura with the statement that both men and women were created from a "single soul," from which "He created its mate," and from them both, Allah spread "countless men and women," the sura moves directly in verse 2 to discuss the rights of orphans. In this context, the subject of marriage is mentioned:

Give orphans their property, do not replace (their) good things with bad, and do not consume their property with your own—a great sin. If you fear that you will not deal fairly with orphan girls, you may marry whichever (other) women seem good to you, two, three, or four. If you fear that you cannot be equitable (to them), then marry only one, or your slave(s): that is more likely to make you avoid bias (Q. 4:2-3).

Both the context of revelation and the linguistic construction—where the permission is linked to the fear of injustice towards orphans—confirm that this is not a permanent law but rather a temporary ruling to address a specific situation. However, the confusion arose because the practice of "polygamy" was a custom predating Islam that was not subject to any standards. If Islam attempted to establish some guidelines and rules for this unregulated custom to limit the exploitation of women and their treatment as mere property or pleasure, the juristic interpretation of

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<sup>14</sup> This arrangement is agreed upon by both *al-Suyūṭī* in *Al-Itqān fī 'ulūm al-Qur'ān* and *al-Zarkashī* in *Al-Burhān fī 'ulūm al-Qur'ān*.

these guidelines departed from the context of equality and reintroduced them within the framework of male dominance and control over women's fate. It is specifically this juristic interpretation that Imam Muḥammad 'Abduh criticized in a noteworthy passage:

I saw in the books of the jurists that they define marriage as a contract through which a man gains ownership of a woman's body. I did not find a single word that refers to anything other than physical gratification. All of their definitions are devoid of any reference to the moral duties that are the greatest expectations two cultured individuals can have of one another. Yet I found in the Noble Qur'an a statement that truly applies to marriage and can be used as a definition for it. I do not know of any law among the nations that have reached the highest levels of civilization that offers a better definition. Allah Almighty says, "Another of His signs is that He created spouses from among yourselves for you to live with in tranquillity: He ordained love and kindness between you." (Q. 30:21) One who compares the first definition, given by the jurists, with the second, revealed by Allah, will see for themselves the degree of degradation that women have reached in the eyes of our jurists and how this degradation spread from them to the general Muslim populace. One would no longer be surprised at the lowly status to which marriage has fallen, where it has become a contract whose sole purpose is for a man to enjoy a woman's body for his own pleasure. This led to the subsequent secondary rulings based on this atrocious principle<sup>15</sup> ('Imāra, 1972).

The Imam continues his critique of the traditions and customs that have turned exceptions into rules, and what is permissible into obligatory duties. He does this to address the legitimacy of enacting laws that restrict the practices of "polygamy" and the "unrestricted freedom of divorce" available to men without limits or regulations. In his analysis, he clearly recognizes the nature of the social problems arising from the chaotic understanding and narrow-minded interpretations of religious texts. This confusion stems from the failure to distinguish between what is explicitly stated and what is inferred in the meaning of the texts, as well as between the general and specific contexts within their structure.

The Imam bases his analysis on an acute awareness of the distinction between two contexts: the context of the revelation of the texts and

<sup>15</sup> Muḥammad 'Abduh wrote this in *Al-Waqā'i' al-miṣriyyah*, Issue 1055, March 7, 1881. See *Al-A'māl al-kāmila*, Vol. 2, p. 72.

its historical circumstances, and the context of interpretation and the evolving historical and social realities. Through this approach, he paved the way for figures like Qāsim Amīn in Egypt and Ṭāhar Ḥaddād in Tunisia. The Imam says:

Polygamy is one of the ancient customs that was prevalent when Islam emerged and widespread in various regions, at a time when women were considered a special category somewhere between humans and animals. Polygamy is among those customs that historical experience has shown to be linked to the social status of women. It is self-evident that polygamy carries a significant disrespect for women... Thus, God, through His law conveyed by the Prophet, intended mercy for women, affirming their rights and establishing just rulings that elevate their status. The matter is not as European writers claim, that Islam transformed an Arab custom into a religious mandate. Rather, Europeans based their claims on the misuse of Islam by Muslims, which is not supported by the true teachings of the religion... The Qur'an permits polygamy conditionally, requiring justice. If there is fear of injustice, then the limit is set to one wife. There is no encouragement for polygamy, but rather a discouragement... Islam limited the number of wives to four and imposed strict conditions on those who practice polygamy, to the extent that if they truly understood, none would marry more than one wife... As for the permissibility of abolishing this custom, i.e., polygamy, there is no doubt about it. Firstly, because the condition for polygamy is the assurance of justice, and this condition is almost always absent. Even if it is found in one in a million, it cannot be taken as a general rule. When corruption prevails and it becomes likely that men will not treat their wives justly, the ruler or the religious authority can prohibit polygamy to preserve the greater good. Secondly, the widespread mistreatment of wives in polygamous marriages, denying them their rights to financial support and comfort, justifies the prohibition of polygamy by the ruler or religious authority to prevent widespread harm... Thirdly, it has become evident that the root of corruption and enmity among children stems from the differences between their mothers. Each child is raised to hate the other, and by the time they reach adulthood, they become fierce enemies, continuing their disputes until they ruin their homes with their own hands and those of others. Thus, the ruler or religious authority may prohibit polygamy to protect households from corruption. It is not just, however, to prevent a man whose wife is childless from marrying another to have children, as procreation is the primary purpose of marriage. If the wife is barren, it is not right to prevent the husband from taking another wife. In general, it

is permissible to restrict men from marrying more than one wife unless there is a proven necessity, as determined by a judge. There is no religious obstacle to this, only custom prevents it<sup>16</sup> (‘Imāra, 1972, pp. 84-95).

In addition to that bold proposal, the Imam did not stop at demanding equality between women and men in the right to request divorce, as well as addressing the misuse of the unilateral right of men to divorce without restrictions, by proposing legal regulations requiring that no divorce should occur without a judge’s ruling. What is particularly notable is that the Imam’s efforts bore fruit primarily in Tunisia, with the issuance of the Personal Status Code in 1957. This law criminalized “polygamy” and

<sup>16</sup> Ibid., pp. 84, 85, 92, 93, 94, 95. The Shaykh does not tire of reiterating his opinion whenever the opportunity arises. In his work of *Tafsīr*, he sees that the permission for polygamy in the verse “you may marry whichever (other) women seem good to you, two, three, or four. If you fear that you cannot be equitable (to them), then marry only one.” (Q. 4:3) The fear of injustice applies not only to certainty but also to suspicion or even the mere imagination of injustice. However, the law may excuse such doubt, as these matters rarely come with complete certainty. Thus, the one who is permitted to marry a second wife, or more, is the one who is confident in his ability to act justly, without hesitation or with only minor doubts about it. Allah also says in another verse of the same chapter: “You will never be able to treat your wives with equal fairness, however much you may desire to do so.” (Q. 4:129). This could be interpreted as referring to justice in the inclination of the heart. If it were not for this, the combination of the two verses would lead to the conclusion that polygamy is entirely forbidden. The continuation of the verse says, “do not ignore one wife altogether, leaving her suspended (between marriage and divorce).” God forgives the servant for what is beyond his control, like the inclination of the heart. The Prophet (peace be upon him) in his later years inclined more towards ‘Ā’isha than his other wives, but he did not give her anything without the consent of the others, and he used to say: “O Allah, this is my division in what I control, so do not hold me accountable for what I cannot control,” meaning the inclination of the heart. Anyone who reflects on the two verses will realize that the permission for polygamy in Islam is very tightly restricted, almost as if it is a necessity that is permitted only to those who need it and are confident in their ability to act justly and avoid injustice. If one considers this restriction and the harms that result from polygamy in modern times, one would conclude that it is impossible to uplift a nation where polygamy is widespread. Thus, scholars must reconsider this issue, especially the *Ḥanafīs*, who hold authority and follow the *Ḥanafī* school of thought, as they do not deny that religion was revealed for the benefit and well-being of the people, and that one of its principles is to prevent harm and hardship. If something causes harm in a particular era that it did not in previous times, there is no doubt that the ruling must be changed to fit the present circumstances, based on the principle: “Preventing harm takes precedence over obtaining benefits.” From this, it becomes clear that polygamy is absolutely forbidden when there is fear of injustice. *Al-A’māl al-kāmila*, Vol. 2, pp. 78–83; Vol. 5, pp. 169–170.

established that the right to request “divorce” is shared between husband and wife, and divorce could only be granted by a court ruling, ensuring the rights of the party harmed by the divorce, whether it was the husband or the wife.<sup>17</sup> In his courageous defence of women’s rights, the Imam found legal precedents within both the Mālikī and Ḥanafī schools of thought to support his stance. He argued that there is a consensus that a woman has the right to stipulate in the marriage contract the condition that she can divorce herself whenever she wishes. The difference between the Mālikīs and Ḥanafīs, according to the Imam, lies in the woman’s right to divorce in the absence of such a condition in the marriage contract. While the Ḥanafīs do not consider her eligible, the Mālikīs affirm her right to seek a divorce from the judge in case of harm.

Before delving into the different perspectives, the Imam firmly states a clear principle:

There is no divorce except before a judge or a *ma’ẓūn* (an authorized official), with the presence of at least two witnesses, following a one-week waiting period for reflection. Afterward, two arbitrators—one from the husband’s family and one from the wife’s—must provide a report to the judge confirming the impossibility of reconciliation and their failure to mediate between the couple<sup>18</sup> (‘Imāra, 1972).

However, the practical question that preoccupies the Imam is: how can this principle be legally implemented in Egypt, where the judiciary operates under the Ḥanafī school, which became the official state doctrine since the Ottoman occupation, and which views women as lacking legal capacity? The Imam first responds to this legal opinion by refuting it with logic that is often missing in today’s religious discourse. He says:

No matter how much we restrict divorce, women will never receive the respect and dignity they deserve unless they are granted the right to divorce. Fortunately, our precious Shari’a does not hinder us from doing what is necessary for women’s progress. We must adopt a school of thought other than Ḥanafī because it denies women the right to divorce under all circumstances. The Ḥanafī jurists claimed that

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<sup>17</sup> Refer to our analysis of this law from a Sharia and jurisprudential perspective in “*Women in the Discourse of Crisis*,” previously mentioned, Chapter 4.

<sup>18</sup> *Al-A’māl al-kāmila*, Vol. 2, pp. 125-126.

‘divorce is denied to women because they are characterized by mental deficiency, religious deficiency, and overwhelming emotions.’ However, these reasons are false, as even if that was true of women in the past, it cannot be true in the future. Furthermore, many men are more deficient in religion, reason, and emotional control than women. Alternatively, if the Ḥanafī school remains in place, every woman who marries should stipulate that she has the right to divorce herself whenever she wishes or under specific conditions. This condition is acceptable in all schools of thought<sup>19</sup> (‘Imāra, 1972).

There are two reasons why the Imam preferred to continue adhering to the Ḥanafī school of thought, despite the fact that the Mālikī school “granted women their rights in this matter and affirmed that they could take their case to the judge whenever they suffer harm from the husband.” The first reason is practical, as it is difficult, if not impossible, to change the laws already applied in the courts. The second reason is the Imam’s concern that if the Mālikī school were applied, there might be a possibility:

The judge may not grant the wife’s request for divorce when her husband marries another woman, on the grounds that this is ‘permissible’ for the husband. However, if she stipulates that she can divorce herself whenever she wishes or when her husband marries another woman, then the matter would be in her hands<sup>20</sup> (‘Imāra, 1972).

Therefore, the Imam prefers to remain with the Ḥanafī jurisprudence and urges women to stipulate the right to divorce (themselves) whenever they wish or when their husband marries another woman. He believes that this solution is “wiser and more decisive. Placing divorce under the authority of the judge is more likely to restrict it and better preserve the institution of marriage”<sup>21</sup> (‘Imāra, 1972).

In addition to the text that the Imam cited from Mālikī jurisprudence to affirm the woman’s right to request divorce, just as the man can, we would like to add here, to strengthen the Imam’s position and any reformist stance within the framework of Islamic Shari‘a, a model of a marriage contract that was in practice in the 4th century AH (11th century CE)

<sup>19</sup> Ibid, pp. 127-128.

<sup>20</sup> Ibid, p. 129.

<sup>21</sup> Ibid, p. 129.

in Al-Andalus. This exemplary document clearly reveals the rights that women enjoyed, as specified in the conditions of the marriage contract in certain Islamic societies. This demonstrates that a woman's enjoyment of rights, even to the extent of equality with men, does not conflict with Islamic Shari'a. In other words, it can be said that Islam is not responsible for the backward status of women in some societies whose people follow Islam. The phrases of the model marriage contract are as follows:

This is what (Name), son of (Father's name), of (Family name) has provided as a dowry for his wife (Name), daughter of (Father's name), of (Family name). He provided her with such-and-such amount of dinārs and dirhams, calculated based on the value in circulation in Córdoba at the time of this contract. This includes both immediate and deferred payments, with the immediate payment being such-and-such amount of dinars and dirhams, which were given to (Name) by her husband (Name), through her father (Name), as she is a virgin under his guardianship and care. He received the amount on her behalf to prepare her for her husband, and thus her husband is cleared of the debt. The deferred portion is such-and-such amount of dinars and dirhams, in the same specified currency, to be paid later by the groom, deferred for such-and-such number of years, starting from the month of (Month) in the year (Year).

(Name), son of (Father's name), also voluntarily committed to his wife, (Name), out of his own free will and in order to win her affection and bring her happiness, that he will neither marry another woman nor take a concubine or a slave woman. If he does any of these things, the matter will be in her hands, and the woman he marries will be considered divorced, and any concubine will be freed for the sake of Almighty God. Furthermore, the authority over any concubine will be hers: if she wishes, she may sell her, or if she wishes, she may keep her, or if she wishes, she may set her free at his expense.

He also committed not to be absent from her for an extended period of time, whether near or far, for more than six months, except for the purpose of performing the obligatory pilgrimage for himself. In that case, he may be absent for three years, provided he informs her in advance of his journey and his intention to perform the pilgrimage, while continuing to provide for her needs, including sustenance, clothing, and housing. If he exceeds either of these time limits, the matter will be in her hands, and her word will be accepted after the expiration of her time limits, provided that she remains in her house with the presence of two just



witnesses who swear by God that he has been absent longer than what was stipulated for her.<sup>22</sup> Then the matter will be in her hands, and she may wait as long as she wishes without nullifying her condition.

He also committed not to relocate her from her home in the city of (City) without her permission and consent. If he forces her to relocate against her will, the matter will be in her hands. If she agrees to relocate and later requests to return and he does not return her within thirty days of her request, the matter will be in her hands, and he will bear the cost of her relocation, both to and from the new place.

He further committed not to prevent her from visiting all her female relatives and male relatives who are her legal guardians. Likewise, he committed not to prevent them from visiting her, within the bounds of what is appropriate and customary between families and relatives. If he does anything to prevent this, the matter will be in her hands. He must treat her well and live with her in kindness, as commanded by God Almighty. In return, she must treat him with the same good companionship and pleasant living, as God said: 'And men have a degree (of responsibility) over them.'

(Name), son of (Father's name), acknowledges that his wife (Name) is not accustomed to serving herself due to her status and position. He declared that he is capable of providing her with servants and that his wealth is sufficient for this, and thus he willingly committed to providing her with servants.

He married her with the word of God Almighty and according to the Sunnah of His Prophet Muhammad (peace be upon him). She is to be with him under the protection of God Almighty and with the rights that God has established for wives over their husbands, either to keep them with kindness or to release them with grace. Her father, (Father's name), gave her in marriage to him, as a virgin under his guardianship and care, healthy in body, as God Almighty has entrusted her to him, and granted him the authority of her marriage contract.

Witnesses to this marriage contract are (Witness 1), son of (Father's name), and (Witness 2), son of (Father's name), who both testified that they heard and understood what was said by the contracting parties and recognized them. Both were in a state of sound health and competent

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<sup>22</sup> In the original text, "they recognize her" was written, but we have corrected it to the accurate version.

to act, and this contract was made in the month of (Month) in the year (Year)<sup>23</sup> (Ibn al-‘Aṭṭār, 1983).

The issue of “polygamy” is now being reconsidered—sometimes cautiously, and at other times openly—in a polemical context, particularly when viewed as being, especially with regard to the religious conditions stipulated, “morally superior” and less harmful from a social perspective compared to the chaos of free sexual relationships in the West. There is no doubt that the comparison relies on the mechanism of “analogy.” Analogy consists of a base and a derived case. If the analogy is one of “continuity,” the ruling of the base transfers to the derived case. If the analogy is one of “difference,” the ruling of the derived case stands apart from that of the base. In either case, the relationship of similarity between the base and the derived remains implicit in the process of analogy. The defense of “polygamy” in such debates relies on the implicit assumption that the West is the standard against which everything is measured. This logic is entirely contrary to the project of a cultural renaissance based on an independent and distinct civilizational foundation—it is, in fact, its opposite. For analysis here, we have chosen—representing the mentioned discourse—a thinker who cannot be described as extreme or rigid, let alone regressive or clinging to the remnants of the past and tradition. He is someone who raises the issue cautiously, accompanied by stern warnings that his discourse should not be understood as advocating for polygamy or as believing in the absolute superiority of men over women. Our thinker—Professor Mohamed Talbi—begins by considering “polygamy” as an abnormal situation but poses the question: Is it better to deal with abnormal situations by allowing adultery or by allowing polygamy? To justify the implied answer in the structure of the question, these abnormal cases are elevated from their abnormality to one of the fixed laws of existence. This elevation is based on two things: the historical relationship between men and women, a history grounded in domination that grants men the role of leadership, and the second is the disparity in sexual appetite between men and women, a disparity that appears natural from a biological perspective:

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<sup>23</sup> Ibn al-‘Aṭṭār, Muḥammad ibn Aḥmad al-Umawī (d. 399/1009), *Kitāb al-wathā‘iq wa al-sijillāt*, edited by P. Chalmeta and F. Corriente, (Madrid: The Spanish-Arab Institute of Culture, 1983), pp. 7–9.

The meaning of this ... is that there are fixed constants within the human family from the beginning of creation until today, which grant the husband within the marital life the role of leadership, and in a secondary rank, sexual privileges that take the form of polygamy in some societies and other forms in others. There are no constants for this continuity and permanence without justifications and deep reasons, foremost among them biological reasons, no matter the value of the many additional reasons... Males do not give birth, that is how biological distribution was ordained, and biological structure dictated that there be a disparity in sexual appetite between male and female, observed in all animal groups and discernible to the naked eye. This disparity in sexual appetite has repercussions at the level of the human family and its social organization: including the phenomenon of polygamy, and the search to satisfy this appetite through financial exchange via what is known as 'the oldest profession in the world,' a profession that is almost exclusively limited to women to satisfy the male appetite, and which has no equivalent to satisfy the female appetite. Is it conceivable that all of this exists without deep causes—many, no doubt—but at the forefront of them, beyond any doubt, are the causes tied to biological structure? (Wanis et al., 1992).

Such a presentation of the issue offers more of a justification than an explanation. Explaining this historical dominance of the male over the female must begin from the “anthropology” of evolution, not from “biological” nature. Relying on observations from the animal kingdom—even if such observations are accurate—and drawing analogies between humans and animals overlooks the fact that humans are cultural beings. The result of such an approach is that “polygamy”—an abnormality—becomes natural law. However, we must acknowledge that this perspective reduces human existence to that of a biological being, with no history beyond its natural history and no culture to differentiate its history from that of other natural creatures. The claim that the “male” possesses a higher degree of sexual appetite than the female, due to the female’s preoccupation with reproduction—whether through pregnancy or nurturing eggs—is a claim without scientific evidence. Furthermore, basing the argument on the fact that “sex” has become a commodity in some societies neglects the true problem in those societies and merely uses these disgraceful conditions as a justification for legitimizing the exploitation of women. This analysis remains trapped within the prison of biology, treating it as the “essence” of human existence. As a result, the

issue becomes one of “male and female,” when in fact the issue is one of “man and woman,” which is a matter with cultural, social, and historical dimensions.

### *Inheritance*

In the same context of *Surat al-Nisā'* (The Women), and within the broader framework of affirming the rights of orphans—particularly the prohibition against consuming their wealth and the necessity to safeguard it until they reach maturity, which is the age of marriage—the inheritance rulings are laid out as follows:

Men shall have a share in what their parents and closest relatives leave, and women shall have a share in what their parents and closest relatives leave, whether the legacy be small or large: this is an ordained share by God. If other relatives, orphans, or needy people are present at the distribution, give them something too, and speak kindly to them. Let those who would fear for the future of their own helpless children, if they were to die, show the same concern (for orphans); let them be mindful of God and speak out for justice. Those who consume the property of orphans unjustly are actually swallowing fire into their own bellies: they will burn in the blazing Flame. Concerning your children, God commands you that a son should have the equivalent share of two daughters. If there are only daughters, two or more should share two-thirds of the inheritance, if one, she should have half. Parents inherit a sixth each if the deceased leaves children; if he leaves no children and his parents are his sole heirs, his mother has a third, unless he has brothers, in which case she has a sixth. (In all cases, the distribution comes) after payment of any bequests or debts. You cannot know which of your parents or your children is more beneficial to you: this is a law from God, and He is all knowing, all wise. (Q. 4:7-11).

It is noteworthy that the Qur'an encourages sharing with relatives, orphans, and the poor—those who have no share in the inheritance—by giving them charity if they are present at the time of distribution. This is a significant point that should not be overlooked when analyzing Islam's concept of inheritance. The second observation is the Qur'an's emphasis on the fact that the relationship of *'aṣabiyya* (kinship based on paternal lineage) is not the most important of human relationships. While this reminder reflects a general Qur'anic stance, its inclusion in the context

of inheritance verses—where the division is based on *‘aşabiyya* and kinship—marks another significant indication that must not be ignored in analysis. From these two points, it can be inferred that the Qur’an’s concept of justice in the distribution of wealth and resources in society extends far beyond the concepts of “zakat,” “charity,” and “inheritance.” The ultimate aim and objective are that wealth should not “circulate solely among the rich”—i.e., to be monopolized and hoarded by a select few. Within this broader understanding, it is necessary to analyze the meaning of “inheritance” in the Qur’an, and then move from the historical contextual meaning to the “significance” embedded in that meaning, which can emerge in our contemporary religious consciousness.

Al-Wāhidī (d.468/1075), in his book *Asbāb al-nuzūl*, recounts noteworthy events, all centered around illustrating the difference between pre-Islamic customs, where daughters and the weak, meaning young boys, were not entitled to inheritance, and the legislation brought by the Qur’an. In pre-Islamic times, inheritance was exclusively for males capable of fighting, and women had no share. How could we imagine that women could enjoy any rights, let alone the right to inheritance, in a society that buried daughters alive and allowed women to be inherited like property after their husbands died?

If Islam is the religion that prohibited *wa’d* (the practice of burying daughters alive) and deemed it a grave crime, it is also the religion that forbade depriving women of their inheritance by coercion and obstructing them from their lawful rights (Q. 4:19-23). Naturally, it was Islam that established women’s right to inherit from their fathers and husbands, and even from *kalāla* relatives—brothers and sisters.<sup>24</sup> These were all

<sup>24</sup> Inheritance of *kalāla* refers to a situation where the deceased has no children to inherit from them, and both parents have died before them. In this case, the inheritance goes to the siblings. The issue of *kalālah* is mentioned twice in the Qur’an in *Surat al-Nisā’*. The first instance appears in verse 12: “If a man or a woman dies leaving no children or parents, but a single brother or sister (*kalāla*), he or she should take one-sixth of the inheritance if there are more siblings, they share one-third between them. (In all cases, the distribution comes) after payment of any bequests or debts, with no harm done to anyone: this is a commandment from God: God is all knowing and benign to all.” The second time is in verse 176: “They ask you (Prophet) for a ruling. Say, ‘God gives you a ruling about inheritance from someone who dies childless with no surviving parents (*kalāla*).’ If a man leaves a sister, she is entitled to half of the inheritance; if

rights introduced by Islam, and they were not easily accepted by the first Muslims. Their reasoning concerning inheritance specifically was: "We do not give inheritance to those who do not ride horses, carry burdens, or fight enemies"<sup>25</sup> (Al-Wāḥidī, n.d.).

Imam Muḥammad 'Abduh observes the contextual dimension of Qur'anic legislation. Through his analysis of the structural relationships in the verses, such as conjunctions and repetition, he deduces that the mention of women's right to a "share" of what parents and close relatives leave behind means the well-known obligatory portion (*farīda*). He disagrees with other interpreters who claim that the verses above represent a new context, unrelated to what preceded them in the chapter. The Imam argues that the context is continuous, discussing orphans and their rights, as indicated by the statement three verses later: "Those who consume the property of orphans unjustly..." (Q. 4:10).

After detailing the prohibition of consuming the wealth of orphans and commanding that their wealth be returned to them when they reach maturity, the Qur'an mentions that inherited wealth, which guardians preserve for orphans, is to be shared by both men and women, contrary to the pre-Islamic custom of denying women inheritance. This is another detail regarding wealth, following the specification of when and under what conditions it is to be given. The wealth of orphans often comes from parents and close relatives. Therefore, the verse means that if orphans inherit wealth from their parents and close relatives, their shares are to be determined according to the prescribed portions, with no distinction between men and women in the amount inherited, whether little or much. This is why the phrase "from what the parents and close relatives leave behind" is repeated, and the statement, "This is an ordained share" signifies a specific, guaranteed right that cannot be diminished by anyone<sup>26</sup> ('Imāra, 1972).

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she has no child her brother is her sole heir; if there are two sisters, they are entitled to two-thirds of the inheritance between them, but if there are surviving brothers and sisters, the male is entitled to twice the share of the female."

<sup>25</sup> Al-Naysābūrī, Abū al-Ḥasan 'Alī ibn Aḥmad al-Wāḥidī, *Asbāb al-nuzūl* (Cairo: Muṣṭafā al-bābī al-ḥalabī Press, 2nd ed., n.d.), pp. 82-84.

<sup>26</sup> *Al-A'māl al-kāmila*, Vol. 5, p. 177.

The Imam continues his analysis of the phrase “a son should have the equivalent share of two daughters,” in relation to the phrase “Concerning your children, God commands you,” and he interprets it as follows:

It is an explanatory clause with no syntactical significance, and this expression was chosen to signal the nullification of the pre-Islamic custom of preventing women from inheriting, as previously mentioned. It is as if the inheritance of the female is established and well-known, and it is mentioned that the male receives twice as much, or that the female’s share is the original basis in the legislation, and the male’s inheritance is understood by comparison to it. If this were not the case, it would have said: ‘The female inherits half the share of the male,’ and such wording would neither convey this meaning nor align with the context that follows, as we can see<sup>27</sup> (‘Imāra, 1972).

What is important in this analysis is to pause at the significance of the “meaning” that the Imam derived from the structure—the meaning that the Qur’an established the inheritance of the female as the foundational principle, on which the male’s share is based and understood by reference to it. This meaning, which the Imam deduced, carries an “implication” in the socio-historical context, where the male was the standard of value and its origin. What is this Qur’anic implication if not the creation of balance between two axes, one of which dominated, controlled, and monopolized all human, social, and economic value? This is the axis of the male. Balance can only be achieved by temporarily shifting the focus to the other axis, that of the female, so that the principle of equality, initiated in the beginning of the chapter, can be established and spread from the realm of “religious equality” to that of “social equality.”

The dimensions of equality are further affirmed by making the “obligatory share” the acknowledgment of women’s right to inheritance, for this right is a “duty from Allah,” and thus, it is a “specific, guaranteed right, with no favoritism, and no one has the right to diminish it,” as explained by the Imam. This duty becomes the basis on which the male’s share is determined, not exceeding “twice the share of the female,” and these are the “limits of Allah” (Q. 4:13).

<sup>27</sup> Ibid, p. 180.

At the end of the chapter, the phrase “the male is entitled to twice the share of the female” is repeated, followed by the declaration that this is a clarification from Allah to prevent straying: “God makes this clear to you so that you do not make mistakes: He has full knowledge of everything.” (Q. 4:176). To understand the reference to *ḥudūd* (the limits of God) as referring to the female’s share, which should remain limited to half of the male’s share, contradicts both the meaning and the implication. Yet this has been the understanding that prevailed and became established, just as many customs and traditions that Islam sought to change became entrenched in the name of Islam. The historical context, along with both the meaning and the implication, clearly shows that the Qur’anic objective in this legislation—the clarification that prevents straying—was to “limit” the male’s share, which had previously encompassed everything, by setting a maximum that could not exceed twice the share of the female. At the same time, it mandated a share for the female, who had previously received nothing, with a minimum that could not be less than half that of the male. Thus, the limitation placed a cap on the chaos and monopolization, ensuring a portion for those deprived, with the aim of approaching equality in the sphere of social life. Any effort made toward achieving this equality, which is a fundamental aim and highest goal of religious life, is either a legitimate effort or, at the very least, an effort in line with the overall objectives of the legislation. Any effort contrary to this aim or any interpretation that remains confined to the historical moment of the revelation falls into the category of “epistemic error,” regardless of good intentions and sincere faithfulness.

If the limits set by God, which we should not overstep, are that we must not give the male more than double the female’s share of inheritance, and we must not give the female less than half of the male’s share, then these limits allow for the possibility that an *ijtihād* (independent reasoning) could conclude that equality between males and females does not violate God’s boundaries<sup>28</sup> (Shahrūr, 1994). Equality in this sense means

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<sup>28</sup> See Muḥammad Shahrūr, *The Book and the Qur’an: A Contemporary Reading* (Damascus: Dār al-ahālī, 6th ed., 1994), p. 358ff. Shahrūr’s interpretation is based on a conceptualization of the structure of the religious text, which primarily relies on distinguishing between the aspects of *nubuwwa* (prophethood) and *risāla* (messengerhood) in the person of Prophet Muḥammad, peace be upon him. According to this concept, the book that Allah revealed to Muḥammad (the Qur’an) contains two main



equalizing the “maximum” for the male with the “minimum” for the female, and this does not contradict what God has set as limits. It is evident that such equality should extend to all areas that have been misunderstood in Islamic jurisprudence due to the perception that a woman’s value is “half” that of a man’s, based on the issue of inheritance.

Among these areas is testimony in court and the exclusion of women from certain jobs for which their educational capabilities qualify them, such as judgeships. As for what was mentioned in the Qur’an regarding a woman’s testimony, it was describing her situation specifically within the context of “financial transactions” at the time the text was revealed. It was not intended as an eternal law regarding her status. The misinterpretation of the verse: “Call in two men as witnesses. If two men are not there, then call one man and two women out of those you approve as witnesses, so that if one of the two women should forget the other can remind her.” (Q. 2:282) arises from neglecting the narrative context. The verse primarily

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books: “The first book, *Kitāb al-Nubuwwa* (*The Book of Prophethood*), explains the reality of objective existence and distinguishes between truth and falsehood, i.e., reality and illusion. The second book, *Kitāb al-Risāla* (*The Book of Messengerhood*), contains the rules of conscious human behavior and distinguishes between what is *ḥalāl* (permissible) and *ḥarām* (prohibited)” (p. 55). The *risāla* (Messengerhood) level includes *Kitāb al-muḥkamāt* (*The Book of Clear Verses*), which contains laws, rulings, and limits. These are subject to the dialectic of *al-i’tidāl wa’l-inḥirāf* (moderation and deviation) or *al-istiḳāma wa’l-ḥanifiyya* (uprightness and deviation), a dialectic produced by the contradictions of human life as studied in sociology and economics. These contradictions always necessitate qualitative and quantitative changes and developments in legislation and law (p. 447). Shahrūr tries to explain this dialectic—clearly evident in itself—based on what is called the concept of continuous functions in Newtonian mathematics. Despite the ambiguity surrounding this attempt—to integrate mathematical concepts into the interpretation of Qur’anic laws—the conclusion he reaches in the end is not much different from our own analysis.

Shahrūr returns to the issue of inheritance in the lecture previously mentioned, but relying on his semantic distinction between the terms in the verse of inheritance—terms like *naşīb* (share), *ḥaẓẓ* (portion), and *waşiyya* (will)—he takes the phrase “God commands you concerning your children: the male is entitled to twice the share of the female” out of the category of inheritance because it is in the context of the will. His evidence for this is that the term *naşīb* always refers to the inherited portion, whereas *ḥaẓẓ* only appears in the context of the will, not inheritance. From this analysis, Shahrūr deduces that the meaning of the verse pertains to “the will that Allah wants us to abide by in our lives.” He confirms this by pointing out that the term *ḥaẓẓ* is used in the context of this will, leaving no doubt that this will has no relation to the *naşīb* (share) in the inheritance (p. 30).

discusses financial transactions, which women at the time were not typically familiar with. Now that women have begun to participate in all fields of work and life, and their expertise equals or surpasses that of men in many areas, there is no longer any justification for saying that a woman's testimony is worth half that of a man's. Thus, the claim that women cannot bear the responsibilities that men bear in the family and society is merely a repetition of outdated rhetoric from past times<sup>29</sup> (Huwaydi, 1998).

### **Hijab and 'Awra**

In my view, the issue of "clothing" does not warrant all the efforts that are spent on debating it, whether by the extremists who want to imprison women in garments that reveal nothing but their eyes, or by those who seek to interpret the Qur'an in ways that suggest it does not impose a specific dress code on women. However, what has made this topic a public issue in recent years is due to two factors: First, the rise of political movements with Islamic banners, especially after the establishment of the Islamic Republic in Iran following the success of the revolution led by the masses against the Shah's regime. The woman's attire—headscarf and niqab—became one of the most significant symbols revived by this revolutionary wave, representing a "rejection" of the "Western" symbols and signs associated with the Shah's rule. The second factor was a decision by a French court to prohibit Muslim girls who cover their heads from attending schools, arguing that this dress represents a form of religious distinction that is not allowed in France's secular education system. Naturally, this ruling sparked a strong reaction in the Islamic world against what was perceived as bias against Islam and as a form of racial and religious discrimination against Muslims. Adding to this was the context of the Bosnian civil war, where brutal sexual assaults were committed against Muslim women, further deepening the Islamic world's sense of injury and prompting a stronger commitment to what was considered a symbol of the distinctive identity of the Muslim woman's cultural personality.

The contradictions in the discourse surrounding this issue reach illogical extremes on both ends. On one side, there are those who define the

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<sup>29</sup> See Fahmī Huwaydī, "A Talk About Women," previously cited.

specifications of Islamic attire for women in such a detailed and precise manner that it almost resembles the specifications of fashion designers<sup>30</sup> (Al-Mubayyid, 1998). On the other side, there are those who try to find interpretations of the Qur’anic discourse, particularly what is mentioned in *Surat al-Nūr* regarding *zīna* (adornment) and *‘awra* (intimate parts). The author defines the meaning of the term the textual occurrences of the term *zīna* in as referring to “the woman’s entire body;” to differentiate between what must be covered of a woman’s body and what can be revealed, i.e., to define the concept of *‘awra*. The author divides the woman’s body—adornment—into two parts: the visible adornment, which according to the interpretation mentioned refers to “what is naturally exposed of a woman’s body, i.e., what God has revealed in her creation, such as the head, abdomen, back, legs, and hands.” The other part is “the non-visible part of creation, i.e., what God has hidden in the structure and design of a woman. This hidden part consists of the ‘pockets’..which are between the breasts, under the armpits, the genital area, and the buttocks. These are all pockets, and it is these pockets that a believing woman must cover.” Everything else on the woman’s body is considered visible adornment and does not fall under the concept of *‘awra*<sup>31</sup> (Shahrūr, 1994, pp. 606-607). Thus, this interpretation soars into the realm of the text, detached from the context of its place, time, and language; it treats language as an abstract space, independent of the norms of discourse, usage, and tradition.

The truth is that the concept of *‘awra* (intimate parts) is not a notion separate from the cultural structure of any society within its social and historical context. It is not an absolute, fixed concept ingrained in the collective consciousness of humanity as some might assume. If we examine the Qur’anic context—without considering the historical context of its revelation—we might say that *awrah* refers only to the sexual organs for living beings and to the corpse of a deceased person. This is how the term *saw’a* (shame) is mentioned in the Qur’an in two contexts: the first is in the story of Adam and Eve, where their *saw’a* became apparent to them after eating from the forbidden tree (Q. 7: 20, 22, 26, 27, and Q. 20:

<sup>30</sup> See, for example, Muḥammad Sa‘īd al-Mubayyid, “To the Unveiled Women First,” (Doha: Dār al-thaqāfa, 1988), pp. 112–114.

<sup>31</sup> Muḥammad Shahrūr, *The Book and the Qur’an*, previously cited, pp. 606–607.

121). The second context is in the story of the two sons of Adam, where one killed the other and was unable to cover his brother's corpse until God sent a crow to teach him (Q. 3: 31). However, such an interpretation assumes that the Qur'anic text can be understood outside the pragmatic linguistic framework of the era in which it was revealed. Additionally, it overlooks the fact that the internal context of these verses is the depiction of social life in its early, primitive stages.

Recently, an Egyptian newspaper, *Al-Dustūr*, raised this issue in a report titled "The Female Body: Is it 'Awra?" The newspaper began by presenting the view of the prominent Sufi mystic Muḥyyī al-dīn b. 'Arabī (d. 638/1240), who studied Sufism under many masters, including some women. One of the most significant female figures for Ibn 'Arabī was Fāṭima, to whom he attributed much of his knowledge. He often mentions her in his book *Al-Futūḥāt al-makkiyya (The Meccan Revelations)*, particularly noting that she revealed to him, for example, the secrets of the *Sūrat al-Fātiḥa* and its references to various spiritual states and stations. She (Fāṭima) would even address Ibn 'Arabī's mother, saying: O Nūr, you are his earthly mother, and I am his spiritual mother." It is worth noting here that the high regard for the figure of Rābi'a al-'Adawiyya (d. 185/801) in the history of Sufism significantly contributed to the positive view of women, a perspective that characterized mystical and philosophical Sufism, with the exception of Abū Ḥāmid al-Ghazālī (d. 505/1111). Therefore, it is not surprising that Ibn 'Arabī rejected the legalistic view of the female body as 'awra. The newspaper cites him as he reviews various opinions, before presenting his own stance, supporting it with evidence to show that it does not contradict Islamic law:

There are those who say that a woman's entire body is awrah except for the face and hands. Others add that her feet are also not 'awra. Some hold that her entire body is awrah. However, in our view, the only 'awra in a woman is the two private parts, as God said: "And they began to cover themselves with leaves from Paradise" (Q. 7:22; 20:121). Thus, He equated Adam and Eve in covering their 'awra, which are the two private parts. If a woman is commanded to cover herself, it is our view that this is not because her body is 'awra, but rather it is a legal ruling on modesty. Covering something does not necessarily mean that it is considered 'awra.

Here, Ibn ‘Arabī relies on the Zāhirī school of jurisprudence, which rejects the “rationalization” of Islamic legal rulings, meaning that it denies that rulings are based on specific reasons or causes (‘illa). As a result, this school rejects the principle of *qiyās* (analogical reasoning), which is accepted by scholars of other Islamic jurisprudential schools. While jurists from other schools argue that the legal ruling requiring women to cover their bodies is based on the idea that the woman’s body is ‘*awra* (to be concealed), Ibn ‘Arabī rejects this form of reasoning altogether. Additionally, the use of the dual pronoun in the Qur’anic verse—“They became conscious of their nakedness” (referring to both Adam and Eve)—<sup>32</sup>implies that both of them share the same ruling. This is the implication of the text, as indicated by the literal meaning of the words, a meaning that is evident and apparent, according to the Zāhirī methodology.

In the investigative report by ‘Ubāda ‘Alī the author sought the opinions of several scholars on Ibn ‘Arabī’s view, which reveal the dominance of traditional jurisprudential perspectives in the thinking of contemporary religious scholars. Therefore, we present them here:

1. Dr. Muḥyī al-Dīn al-Şāfī, Dean of the Faculty of Fundamentals of Religion at Al-Azhar University, said: “The fatwa contradicts the prevailing view that a woman’s ‘*awra* is her entire body except for her face and hands if she is free, but for a slave woman, her ‘*awra* is like that of a man, from above the knee to below the navel.” (Take note of which era this view is expressed!)
2. Dr. ‘Alī Mar’ī, Dean of the Faculty of Shari‘a and Law at Al-Azhar University, stated: “The term *saw’a* does not mean ‘*awra* in the verses Ibn ‘Arabī cited... The criterion for imposing the hijab is the woman’s femininity and the need to prevent the allure of the female body from arousing men’s desires.”

The concept of ‘*awra* is often associated with the hijab, which many people confuse with the headscarf or niqab. However, ‘*awra* more broadly refers to a complete separation between men and women, a separation that some insist should be so strict that women are effectively imprisoned

<sup>32</sup> This sentence occurs in the context of Q. 20:120-121: “But Satan whispered to Adam, saying, ‘Adam, shall I show you the tree of immortality and power that never decays?’ And they both ate from it. They became conscious of their nakedness and began to cover themselves with leaves from the garden. Adam disobeyed his Lord and was led astray.”

behind closed walls, restricting their movement in life from “the womb” of their mother to “the house” of their husband, and from there to the grave.<sup>33</sup>

Returning to Imam Muḥammad ‘Abduh once again, we recognize that he laid the interpretive foundation for the issue of hijab in modern Islamic thought. This foundation continues to guide the perspective of enlightened representatives of religious-political movements, as we shall see:

The truth is that wearing the *niqāb* and face veil are not Islamic practices, neither for worship nor for decorum. Rather, they are ancient customs that predate Islam and persisted after its advent. This is evidenced by the fact that this custom is not known in many Islamic countries and remains prevalent among many Eastern nations that do not follow the religion of Islam. What Islam prescribes is to cover the chest with the *khimār*, as explicitly mentioned in the verse (Q. 24:30-31). There is nothing in it about partial or full face veils (*tabarqu’* or *niqābs*).<sup>34</sup>

Imam ‘Abduh believed that the command of hijab, in the sense of *iḥtijāb* (seclusion) from men, was specifically for the wives of the Prophet (peace be upon him) and not for all women. Contrary to his contemporaries, he asserted that such hijab is not permissible for women other than the wives of the Prophet, even as an act of emulation or recommendation. In his view, this interpretation is based on the following:

Allah’s saying: “You are not like any other women” (Q. 33:32), indicates that the desire for equality in this ruling was not appropriate. It also draws our attention to the wisdom in not imposing hijab on other women—wisdom that we should recognize and respect. It is not right to neglect these lessons merely to follow an example.<sup>35</sup>

The Imam outlined several practical reasons for not imposing hijab on women, except for the Prophet’s wives. These included everyday matters such as buying and selling, acting as an agent, testifying in court, or engaging in legal disputes—all of which require the individual to be identifiable by their face. This would be impossible if women were to seclude themselves with the niqab or face veil.

<sup>33</sup> *Al-Dustūr* Newspaper, 27 August 1997, p. 5.

<sup>34</sup> *Al-A’māl al-kāmila.*, Vol. 2, p. 113.

<sup>35</sup> *Ibid.*, p. 114.

To sum up: God created this world and empowered humanity to enjoy its benefits according to their abilities. He set limits for human actions, which in turn define rights. He equitably established these limits and rights for both men and women, not assigning an unfair division of the world between them. He did not designate one side of the earth for women to enjoy its benefits alone and another side for men to work in isolation from women. Rather, He made life's benefits shared equally between the two, under the authority of their abilities without discrimination. How, then, can a woman enjoy the opportunities that God has granted her—life, its experiences, her emotions, strengths, and all that she has been offered in the shared world between her and man—if she is forbidden from appearing in front of men, except those who are her close relatives? Undoubtedly, this is something neither sanctioned by the law nor permitted by reason (‘Imāra, 1972).

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