

Can Iranian Women Compensate for Their Absence From the World of *Fiqh*?

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Abstract: It has been maintained that the violation of women's human rights, in countries governed by Islamic law, derives from the lack of women's contribution to the exegesis of the sacred texts. Therefore, the access of women to the realm of *ijtihad* in all likelihood should eliminate, or, at least, hinder these violations. To verify this assumption, I have taken the imposition of the veil in Iran as a touchstone to compare the roles of male and female mujtahids in this respect. The instance of the veil will help us understand whether and to what extent Iranian female mujtahids can and want to have a say in the elimination of what is considered to be a violation to women's human rights.

[Keywords: Shi'a tradition, mujtahid, veil, Iran, *fiqh*]

Among Shi'as we have a wide range of different and contradictory narratives on women's attire.¹ Given this particularity of the second source of *fiqh* (Islamic jurisprudence), one needs long training in medieval Arabic, knowledge of chains of narrators and terminology to single out reliable reports. Even among the most cited accounts, only an expert can distinguish *daif* (weak) and *morsala* (unauthentic) from *sahih* (authentic) ones. Indeed, it was the second source of *fiqh* that brought into play the professionalism in the field of Islamic knowledge, when the Science of Hadith fell into the exclusive expertise of *ulama*.

In *Women's Identity and Rethinking the Hadith*, Barazangi maintains that various injustices to women, such as imposition of the veil, stemmed from the exclusion of women from the elaboration of the Science of Hadith. Such a shortcoming emerged despite the quite active role of the first generation of Muslim women in transmission of hadiths, because this activity, in Barazangi's view, did not entail also the development of "scientific rules of authenticating" those narratives.² Hence, the second source of *fiqh*

¹ M. Khalafi, *Baznegareshi Daroon Dini be Hijab* ("An Interreligious Review of Hijab"), *Ketab-e Zanan*, 37 (1386/2008), pp. 75-132. The contradictions and the more restrictive nature of the Shi'a Hadith, comparing to the Sunni ones, may have occurred because the Shi'a reports belong to a later date and include the Imams' narratives as well. L. Clarke, "Hijab According to the Hadith. Text and Interpretation", in S.S. Alvi, H. Hoodfar and S. McDonough (ed.), *The Muslim Veil in North America. Issues and Debates*, Ontario, Women's Press, 2003, p. 215.

² N.H. Barazangi, *Women's Identity and Rethinking the Hadith*, Farnham and Burlington, Ashgate, 2015, pp. 23-25. About first female narrators of Hadith one can see M.A. Nadwi, *Al-Muhaddithat: The Women Scholars in Islam*, Oxford and London, Interface Publications, 2007. Al-Dhahabi (d. 1374) in his



became an army in the *ulama*'s arsenal against women. The author in her earlier volume *Women's Identity and the Qur'an*, in an almost same fashion, sustains that Muslim women's absence from the field of interpretation of the Koran has ushered, inter alia, in their exclusion from the consultation process of their communities.³ The Syrian scholar, thus, exhorts women to participate in the re-examination of the sacred texts to enact an "inclusive Islam" contributing to the accomplishment of the essential mission of this religion namely the promotion of justice.⁴

Although the weak presence of women in the field of Hadith transmission unites Sunnis and Shi'as, an important difference in this presence should be taken into consideration. Differently from their Sunni counterparts, women sympathetic to the Ali's cause did not make great contribution to the Hadith collections. It has been said that Aisha alone built 15 percent of the Sharia through Hadith transmission⁵ whereas Fatima bint Muhammad, despite her close relationship with the Prophet does not enjoy such an outstanding appearance in the Shi'a Hadith collections.⁶

The early second Islamic century witnessed the rise of professionalism in the field of Hadith transmission. Collectors of these accounts started their research outside the Umayyads' headquarters in Iraq and the Hijaz. Their eagerness to collect as many reports as possible led them to expand their travels to regions as far as Khorasan and Egypt. The inevitable need of travel for collection of Hadith was a requisite that women of that time could not satisfy, because women were not able to develop contact with non-*mahram*

24-volume biographical work included the names of 93 female transmitters of hadiths. Al-Dhahabi, *Siyar a'alam al-nubala'*, Beirut, Mu'assasat al-Risala, 1981. L. Ahmed, *Women and Gender in Islam. Historical Roots of a Modern Debate*, New Haven and London, Yale University Press, 1992, pp. 72-74.

³ N.H. Barazangi, *Women's Identity and the Qur'an*, Gainesville, University Press of Florida, 2004, pp. 32-33.

⁴ N.H. Barazangi, *Women's Identity and Rethinking the Hadith*, cit., pp. 187-206.

⁵ Aisha contributed up to 1400 narratives to the Hadith collections. See A. Sayeed, "Women in Imami Biographical Collections", in M. Cook, N. Haider, I. Rabb and A. Sayeed (eds.), *Law and Tradition in Classical Islamic Thought. Studies in Honor of Professor Hossein Modarressi*, New York, Macmillan, 2013, p. 87; A. Barlas, *Believing Women in Islam. Unreading Patriarchal Interpretations of the Qur'an*, Austin, University of Texas Press, 2002, pp. 45-46; H. Moghissi, *Women and Islam. Critical Concepts in Sociology*, 3 vol., London and New York, Routledge, 2005, vol. I, *Images and Realities*, p. 28; L. Ahmed, *Women and Gender in Islam*, cit., pp. 47, 60, 73.

⁶ A. Sayeed, "Women in Imami Biographical Collections", cit., p. 86 and H. Moghissi, *op. cit.*, p. 38.



men.⁷ Among Shia's, in the pre-*qayba*⁸ period women could not enjoy close relationship with Imams that was the basic precondition for being a reliable transmitter of Hadith. Consequently, this task was performed usually by Imams' close disciples.⁹ As a result, women's contribution to the Shi'a tradition is of a different nature compared to the Sunni world. The few women cited in the Shi'a biographical literature have been considered worthy of mentioning thanks to their legal discernment and skills in paraphrasing Hadith and composing *rijal*¹⁰ works (e.g. Hamida Rydashti). In the biographical literature, these women have been called *alima* (knowledgeable) and *faqihah* (jurist) rather than *muhaddithah* (transmitter of Hadith)¹¹. It reveals two realities: the Shi'a world, despite social obstacles, since the Middle Ages, had the potentiality of growing female mujtahids; however, these women did not receive the necessary acknowledgement for being Hadith reporters, even though transmission of Hadith required lower skills and less education.¹²

Considering the fact that Hadith was the main instrument in the jurists' hands to establish norms such as compulsory veiling in countries like Iran, a question comes to mind: when women are eventually recognised knowledgeable enough to elaborate Islamic law from its sources, do they use their capacity of *ijtihad* to emanate new fatwas in some highly sensitive issues like the veil? Can these women compensate for their absence from the world of the koranic hermeneutics and the Hadith interpretation?

Here to provide an answer to this question I report an outline of the works of five Iranian male scholars who have expressed their ideas about the veil based on history, exegesis and studies of Hadith. Three of these authors have already joined the rank of mujtahid (Ahmad Qabel, Mohsen Kadivar and Seyed Muhammad Ali Ayazi). These

⁷ A. Sayeed, *Women and the Transmission of Religious Knowledge in Islam*, New York, Cambridge University Press, 2013, pp. 188-189. The term *mahram* corresponds to women's unmarriageable kin, e.g. father, brothers, grandfathers, uncles, sons, sons-in-law, etc. The women's relationship with these relatives is bound by the incest taboo. Apart from these close relatives, women's relationship with other men is subject to some restrictions.

⁸ Among Twelver Shi'as it is believed that in 941 the last Imam went into *qayba* (occultation) during which any direct contact with him was impossible. This event marks the beginning of the era in which the Twelvers live in the absence of infallible Imams.

⁹ A. Sayeed, "Women in Imami Biographical Collections", cit., p. 86.

¹⁰ *Ilm al-Rijal* is the study of the life of transmitters of Hadith. These collections help readers to identify reliable narrators of Hadith based on their moral character. See *Oxford Dictionary of Islam*, John Esposito (ed.), New York, Oxford University Press, 2008, p. 135.

¹¹ A. Sayeed, "Women in Imami Biographical Collections", cit., pp. 84-91.

¹² M. Künkler, *Of Alimas, Vaizes and Mujtahidas. Forgotten Histories and New State Initiatives*, manuscript, pp. 6-7.



works are listed in chronological order, hence, from 2004 to 2013. It is worth mentioning that among them only the essays of Khalafi and Ayazi have found the opportunity of being published in Iran, others appeared on the scholars' websites that are inaccessible inside the country. Afterwards, on the same issue we will see the opinions of two contemporary Iranian women who succeeded in obtaining the authorisation of male mujtahids to practice independent reasoning or *ijtihad*.

I do not wish to dwell on the assessment of the koranic references of the question (XXIV: 31 and XXXIII: 59) as they are sufficiently analysed by numerous authors in different languages.¹³ Moreover, I do not refer to those Iranian scholars who have presented their viewpoints on this question with ethical or philosophical approaches.¹⁴ The overview of the male scholars' works has been presented here to display how new approaches to the traditional sources of *fiqh* have led to new conclusions.

The Arabic *sitr*, the Persian *pushesh* or what erroneously has been termed hijab,¹⁵ has been called into question merely as an instance to demonstrate how much the

¹³ Only some examples available in English: Fatima Mernissi, *Le harem politique*, Paris, A. Michel, 1987, trans. en. *The Veil and the Male Elite. A Feminist Interpretation of Women's Rights in Islam*, 1991, pp. 180-181; Helen Watson, "Women and the Veil. Personal Responses", in Akbar Ahmed and Hastings Donnan (eds.), *Islam, Globalization and Postmodernity*, London and New York, Routledge, 1994, pp. 144-145; F. E. Guindi, *Veil, Modesty, Privacy and Resistance*, Oxford and New York, Berg, 1999, pp. 135-137 and 155; A. Barlas, *Believing Women in Islam*, Austin, University of Texas Press, 2002, pp. 55-56 and 157-158; N.H. Barazangi, *Women's Identity and the Qur'an*, cit., pp. 57-58, p. 275; E. Anwar, *Gender and Self in Islam*, London and New York, Routledge, 2006, pp. 108-111; U. Hasan, "The Veil: Between Tradition and Reason, Culture and Context", in Theodor Gabriel and Rabiha Hannan (eds.), *Islam and the Veil. Theoretical and Regional Contexts*, London, Continuum, 2011, pp. 65-70; Manal Hamzeh, *Pedagogies of Deveiling. Muslim Girls and the Hijab Discourse*, Charlotte, IAP, 2012, pp. 30-33; S. Amer, *What Is Veiling?*, The University of North Carolina Press, 2014, pp. 25-28; M. Shahrur, *The Qur'an, Morality and Critical Reason*, Leiden, Boston, Brill, 2009, pp. 292-328.

¹⁴ For instance the scholar of the Koran and Hadith Soroush Dabaq has published two essays about the veil entitled *Hijab dar Tarazoo-e Akhlaq* (Hijab on the Ethical Scale), on 23 December 2012, and *Bi Hijabi ya Bi Effati* (Un-veiled or Un-chaste), on 26 January 2013, on the reformists' website called Jaras. See <http://www.rahesabz.net/story/65483/> and <http://www.rahesabz.net/story/63763/> (last accessed 31/07/2017). He has a philosophical approach towards the question.

¹⁵ The word hijab has been mentioned seven times in the Koran. Five of them have nothing to do with women or dress code (VII:46, XVII:45, XXXVIII:32, XLI:5, XLII:51). Only in two cases this word is used in relation with women (XIX:17 and XXXIII:53), however, none of them refer to garments (S. Amer, *What Is Veiling*, cit., p. 23). Hijab in the Koran and Hadith is an abstract concept or institution not an article of clothing: see G. Vercellin, *Istituzioni del mondo musulmano*, Torino, Einaudi, 1996, p. 168; R.A. Meshel, "Miniskirts and Fundamentalist Fashions. Clothing the Muslim Canadian Women", in A. Sharma and K. Young (eds.), *Fundamentalism and Women in the World Religions*, 2007, p. 160. This change in the connotation of "hijab" has occurred because Muslims' interpretations have replaced the authentic Koranic teachings: see B.F. Stowasser, *Women in the Qur'an, Traditions, and Interpretation*, New York and Oxford, Oxford University Press, 1994, pp. 91-92; Alessandro Aruffo, *Donne e Islam*, Roma, Datanews, 2000, pp. 48-49; N.H. Barazangi, *Women's Identity and Rethinking the Hadith*, cit., p. 11; S. Calderini, "Female



elaboration of Islamic laws depends on whether and to what extent mujtahids have room for manoeuvre. Therefore, instead of focusing on the veil in itself I am more interested in showing the methods adopted by these mujtahids in their arguments for and against compulsory veiling.

1. Hijab is *only* recommended

More than ten years ago, Ahmad Qabel (d. 2012) presented his innovative fatwas about *pushesh*. He was a student of Ayatollah Montazeri from whom received the licence of *ijtihad*. He was detained several times for his original ideas deemed unacceptable by the Iranian ruling system. In those years when he emanated his fatwa on the veil, the issue was still part of the realm of taboo.

Differently from some intellectuals, he did not believe that one had to adapt *fiqh* to the exigencies of the modern world because, in his view, even the today's questions could find their answers through the same Islamic sources when rational hermeneutics was employed.¹⁶ In 2014, a collection of his articles, written from 2004 to 2008 on various issues concerning women's rights, was published on his website.¹⁷ Two years after his death, his contributions to women's rights were collected in a single volume entitled *Ahkam-e Banovan dar Shariat-e Mohammadi* (Ordinances Regarding Women in the Muhammad's Shari'a). In this collection, a section is dedicated to the veil,¹⁸ which was written from February 2004 in Iran to July 2005 while he was in exile in Tajikistan. He observed that in the Koran there was not any evidence relating to the fact that women were bound to cover their heads and necks.¹⁹ He maintained that covering the *awra* (embarrassment) was the obligation of both men and women; however, the sense of *awra*

Seclusion and the Veil. Two Issues in Political and Social Discourse", in Theodor Gabriel and Rabiha Hannan (eds.), *Islam and the Veil: Theoretical and Regional Context*, London, Continuum, 2011, pp. 49-50.

¹⁶ The Qabel's approach to *fiqh* can be found in a volume published posthumously on his website. The book, entitled *Shari'at-e Aqlani* (Rational *Shari'at*), includes some of his articles about the relations of religion and reason. "The rational *shari'a* – he contended – is an invitation to the revision of the authentic [Islamic] texts based on the principles of reason and religion" and "The rational *shari'a* claims that we have different authentic sources that have been neglected by *faqihs* because of their incompatibility with the dominant culture of the past" (A. Qabel, *The Rational Shari'a. Articles on the Relations of Reason and Religion*, Shari'at-e Aqlani, 2012, pp. 62-63).

¹⁷ www.ghabel.net (last accessed 07/12/2017).

¹⁸ A. Qabel, *Ahkam-e Banovan dar Shariat-e Mohammadi*, published on www.ghabel.net, 2014, pp. 53-108.

¹⁹ *Ivi*, p. 70.



was not clear because there was not an *ijma'* (consensus) among jurists on whether women were completely *awra* and if not which parts of their bodies could be left exposed to non-*mahrms*. One piece of evidence of this lack of consensus about the limits of covering, Qabel contended, was that not all Muslim women were treated equally by Shi'a jurists. Muslim *kanizes* (slave women) were not supposed to wear head cover since they were not deemed worthy of respect. If concerns of social disorder had stood on the basis of the definition of women's attire and the presence of unveiled women had been considered a cause of sexual disturbance, the *kanizes* would have been bound to wear the veil as they were both Muslim and women. Qabel, here made a comparison with the Sasanian Iran when restrictive seclusion was performed against noble women to stress the un-Islamic roots of hijab.²⁰

He reported different fatwas of the Shi'a jurists from Middle Ages up to the contemporary time. The Iraqi scholar of the fourth century, Ibn al-Junayd al-Iskafi, whose field of expertise, inter alia, included *fiqh*, *kalam*,²¹ Arabic literature and lexicology, was the one who emanated the most controversial fatwa in the Shi'a history about attire. The *awra*, in Iskafi's view, in both sexes consisted of the same organs; hence, the only covering demanded, regardless of sex, included genital organs. Muhammad Muhaqiq

²⁰ Ivi, p. 59. It has been said that when Muslims started to expand their territories, they adopted many traditions of the conquered people due to the increasing need for social control, which had generated demand for adoption of new strategies. See N.R. Keddie, *Women in the Middle East. Past and Present*, Princeton and Oxford, Princeton University Press, 2007, pp. 31, 207. Hence, many Byzantine, Arab, Persian, Jewish elements found their ways in the Islamic custom. Female circumcision and stoning to death are some examples of these practices. To these measures were gradually attributed forms of prophetic traditions and chains of transmitters: see B.F. Stowasser, *op.cit.*, p. 93, N. Othman, "Islam", in C. Kramarae and D. Spender (eds.), *Routledge International Encyclopedia of Women. Global Women's Issues and Knowledge*, 4 voll., London and New York, Routledge, 2000, vol. III, p. 1160; A. Barlas, *Believing Women in Islam*, Austin, University of Texas Press, 2002, pp. 64-65; R. Aluffi Beck-Peccoz, "Hijab", in M. Campanini (ed.), *Dizionario dell'Islam*, pp. 141-143; L. Ahmed, *Women and Gender in Islam*, cit., pp. 68, 80-83; Renata Pepicelli, *Il velo nell'Islam*, Roma, Carocci, 2012, p. 39. It is supposed that the women's veil belonged to those civilities that had developed sedentary and urban lifestyles and as such was extraneous to Arabs of the proto-Islamic period: see G. Vercellin, *Tra veli e turbanti. Rituali sociali e vita privata nei mondi dell'Islam*, Venezia, Marsilio, 2000, p. 109. However, some authors reject any attribution of veiling to Sasanians: see F. Davaran, *Continuity in Iranian Identity. Resilience of a Cultural Heritage*, New York, Routledge, 2010, p. 97.

²¹ *Ilm al-kalam* is the Science of theology that elaborates the doctrinal teachings of the various schools of theology. See P. Morewedge, "Kalam" in R.C. Martin (ed.), *Encyclopedia of Islam and the Muslim World*, 2 voll., New York, Macmillan Reference, 2004, vol. I, p. 385.



Damad (d. 1968) and the Lebanese Muhammad Mehdi Shams al-Din (d. 2001) declared that veiling in the Koran was only recommended and no necessity could be applied to it.²²

Apart from the Koran, according to Qabel, there was no acknowledged Hadith that entailed the necessity of covering of women's hair and necks. He observed that even an *akhbari* scholar²³ like Muhammad Baqir Majlesi (d. 1699) had confirmed that among the most Shi'a jurists there was no mention of the necessity of head cover for women.²⁴

Here the Qabel's concern was to demonstrate that, differently from the usual jurists' claims, there was no consensus about the necessity of the covering of head and neck. If jurists had reached consensus over a certain issue, Qabel claimed, historical studies on its roots and the motives behind that ordinance would have become impossible. This is why Qabel put great emphasis on the lack of a general consensus on this issue. He, thus, maintained that even though some kind of *ijma'* had occurred among jurists it was a *madraki ijma'*,²⁵ which is devoid of any value. Two examples of jurists mentioned in the Qabel's volume, who rejected the essentiality of the women's head cover, are Muhaqiq Ardabili (d. 1585) and Aqa Ridha Hamedani Najafi (d. 1904).

Moreover, Qabel noticed a controversial issue in the works of some contemporary jurists wherein the women's head cover had been called the "flag of Islam" even though such a sacralised attire could be an extremely tight outfit. It meant, he added, that if a woman wore a skin-tight overall whose texture did not display her skin colour but revealed the form of all parts of her body, while she had covered her hair, could appear in street and on the Iranian television without any problem!

After this examination of jurists' opinions, Qabel declared that the absence of a scholarly consensus had left the question open. Therefore, he invited jurists to adopt dynamic *ijtihad* regarding this issue. Eventually, Qabel as a *mujtahid* emanated his own

²² Ivi, p. 73.

²³ Akhbaris were those Shi'a scholars who maintained that the Imams' hadiths were sufficient for Shi'a juridical exigencies and the introduction of *ijtihad* was an innovation of those *ulama* who were influenced by Sunnis. The literalist approach of these scholars towards Hadith made them more loyal to these reports in their philosophical and juridical elaborations. See R. Gleave, "Akhbariyya", in R.C. Martin (ed.), *Encyclopedia of Islam and the Muslim World*, 2 voll., New York, Macmillan Reference, 2004, vol. I, p. 34.

²⁴ See A. Qabel, *op. cit.*, p. 66.

²⁵ Among Shi'as, we have different forms of consensus. The *ijma' madraki* (v.s. *ijma' ta'abodi*) is a consensus in which the jurists' agreement is based on uncertain pieces of evidence from Islamic sources. Therefore, *ijma' madraki* is considered unreliable. On this type of *ijma'* see M. Imami, "Ijma' Madraki", *Fiqh-e Ahl al-Beyt*, 15 (1388/2010) 60, pp. 110-132.



fatwa: covering hair and neck for women was only *mustahab* (recommended) and not *wajib* (necessary).

2. Incoherence of the Shi'a Hadith

The other Iranian scholar who has analysed this question from a religious point of view is Moslem Khalafi (b. 1969). In his article entitled *Baz Negareshi Daroon Dini Be Hijab* (A Religious Revision of Hijab), published in 2007 in an Iranian magazine, he examines the question both in the Koran and in the Shi'a Hadith. Regarding the Hadith, he provides a list of extremely permissive and extremely restrictive narratives about hijab. Khalafi observes that some Shi'a accounts are so limitative that clearly legitimise the imprisonment of women. For instance, Shayk Saduq (d. 991) registered a hadith of Imam Ja'far al-Sadiq when he reminded Muslims that the Prophet had authorised the dialogue of women with non-*mahr*ams only in the case of extreme urgency and in the limits of five words. In the *Kitab al-Kafi*, the Prophet said, "women are deficient and *awra*; cover the *awra* at home and remedy their deficiency keeping them quiet".

On the other hand, some reports, with authentic origins, are so permissive that allow women to pray without any head cover and men to look at their beautiful faces even with sexual intention. There are two types of coverings: *sitr-e salati* (covering for prayer) and *sitr az nazer* (covering in front of non-*mahr*ams). Khalafi argues that normally Shi'a jurists ordered a more restrictive covering for prayer than the veiling in front of non-*mahr*ams; because the observer of a prayer is supposed to be an omnipresent entity, therefore a woman can never hide herself from it. Consequently, allowing women to pray without head cover entails much more permissiveness with regard to their presence in front of non-*mahr*ams.²⁶

Like Qabel, Khalafi underlines the jurists' disagreement on the limits of covering. Are hair, ears and neck, parts of head and should women cover them as well? After an examination of the ideas of five Shi'a jurists from the tenth to seventeenth century about limits of covering, Khalafi concludes that the hair that falls below the shoulders, like nails, is not a part of the human body because it has no spirit. To provide evidence for his claim,

²⁶ M. Khalafi, *Baznegareshi Daroon Dini be Hijab* ("An Interreligious Review of Hijab"), *Ketab-e Zanan*, 37 (1386/2008), pp. 90-91.



Khalafi resorts to ordinances of the spiritless parts of the body. Hair, like nails, does not have to be buried; touching it on a human dead body does not require *ghul mas al-mayyit*²⁷ and it is not *najis* (impure). Moreover, during the ablution, Muslims are supposed to wash their heads and not their hair.²⁸ At the end, he asks a very important question that did not find any answer in the conclusion. Considering the existing contradictions in the Shi'a reports on modesty and women's attire, he asked, "Why have only those narratives that necessitate the veil gained visibility in Iran?", a question whose answer could create hindrance to the publication of the Khalafi's essay in Iran.

3. Incentives instead of punishment

Sayed Muhamad Ali Ayazi (b. 1954) is a prominent scholar of the Koran. He pursued his studies in the *hawza* (Shi'a seminary) of Mashhad and Qom and completed part of his *hawza* career under the supervision of Ayatollah Montazeri. Ayazi has so far published numerous books and articles on the hermeneutics of the Koran and history of its exegesis. In 2007 he wrote an article entitled *Naqd va Barrasi-e Adele Fiqhi Elzam-e Hokumati Hijab*²⁹ (Analysis of the Jurisprudential Basis of the Government Obligation of Hijab) in which he scrutinised seven reasons that the advocates of compulsory veiling express in favour of this obligation. Differently from other scholars mentioned in this essay, he did not challenge the limits of covering and its necessity for women, but he criticised the method of facing the phenomenon of *bi-hijabi* (unveiling) and *bad-hijabi* (improper veiling). His main references for his debate are the koranic verses X:99, XXVI:4 and II: 256 that declare freedom in the matter of religion.

Analysing the principle of *al-amer bil ma'ruf wa nahi anil munkar* (enjoining good and forbidding wrong) – which are two ancillaries of the faith in the Shi'a Islam, Ayazi emphasises that not all *harams* are *munkar* and not all *wajibs* are *ma'ruf*.³⁰ He

²⁷ Shi'as believe that one who touches a human dead body, which is cold and is not given the ritual bathing called *ghusl al-mayyit*, must perform this purification.

²⁸ Ivi, 80-81.

²⁹ M.A. Ayazi, *Naqd va Barrasi-e Adele Fiqhi Elzam-e Hokumati Hijab*, ("Analysis of the Jurisprudential Basis of the Government Obligation of Hijab"), *Kavoshi No Dar Fiqh*, 51-51 (1386/2007), pp. 187-233.

³⁰ There are five categories of *ahkam* (rulings) in the Islamic law that regularise the behaviour of the faithful in front of different phenomena: *wajib* (obligatory), *mustahab* (recommended), *mubah* (licit), *makruh* (reprehensible) and *haram* (forbidden). The relativism concealed in the Ayazi's explanation of this principle of Shi'ism stems from the fact that the word *ma'ruf* literally means "known" or what is approved



instead believes that, differently from harams and *wajibs* that are based on fixed assumptions, the definition of *munkar* and *ma'ruf* depends on the *urf* (customs) of societies. To lead people away from *munkars*, in primis, the meaning of *munkar* should be defined to them.³¹ Moreover, he believes that not all *munkars* are crimes and deserve harsh punishments. The division between *haq an-nas* (people's right) whose transgression should be punished by rulers and *haq Allah* (God's right) that cannot and should not be controlled or faced by governors, is another basis of the Ayazi's claim. Women's veiling (likewise ancillaries of faith) is a part of God's rights and not social issues, hence, rulers cannot decide about it.³² Moreover, we have not any evidence to prove that the Prophet and the Infallible Imams punished women for their attire.³³ In this way, he takes the courageous action of challenging the Article 638 of the Iranian penal code that lays out punishment for improper veiling as seventy four lashes, jail sentence of up to two months, or a fine of 500,000 riyals.

To respond to those who maintain that tolerance towards unveiling can bring about social strife, Ayazi offers examples of other social contexts, besides the Iran's nomadic and rural areas, where the absence or different attitudes towards veiling have not caused social chaos and anarchy.

Almost at the end of his essay, Ayazi in a fearless move, challenges the applicability of the principle of *wilayat al-faqih*³⁴ to the veil. He contends that regarding the religious practices no one can be *vali* (tutor) of others. Veiling in the Ayazi's debate is an act of devotion and if governors desire its observation by all women, the right strategy to adopt should be based on cultural activities and moral incentives instead of penalties.

because of its familiarity for a certain society and its antithesis *munkar* means what is disapproved because it is unknown and extraneous. See T. Izutsu, *Ethico-Religious Concepts in the Qur'an*, London, McGill-Queen's University Press, 2002, p. 213.

³¹ Ivi, p. 201.

³² Ivi, pp. 219-220.

³³ Ivi, p. 198.

³⁴ Literally, "Guardianship of the Islamic Jurist", i.e., the doctrine reformulated by Ayatollah Khomeini that forms the basis of the current Iranian political system. In practice, it entails that the Supreme Leader has the duty/right to verify if the actions and deliberations of the three branches of power are conform to the "correct" interpretation of the Sharia.



4. A careful study of historical evidence

The only lay scholar whose work is mentioned here is Amir Hussein Torkashvand (b. 1964). Based on the Koranic and Hadith evidence, the non-clerical intellectual has recently opened a very controversial debate on the dress code of the first Islamic century that has sparked polemics among scholars. On 2010, Torkashvand sent his book, entitled *Hijab-e Shar'i Dar Asr-e Payambar* (Hijab in the Prophet's Time), to the minister of Culture and Islamic Guidance to receive permission for publication. As he was denied permission, the book found its way on his weblog.³⁵ Although the author (who was obviously aware of the probable consequences of his work) in the introduction had asked readers to use his e-book only for academic ends, it immediately conquered social media. Various presentation meetings were then held on this volume and different reviews were written on it. The main Torkashvand's objective was to exercise influence over mujtahids and Shi'a scholars without creating ado about the book. *Hijab-e Shar'i* in its current version has 995 pages and is divided in three sections: the veil in the pre-Islamic Arabia (especially in the Hijaz), the Muslims' reaction to it, the meaning and ways of covering, an enquiry into the women's attire by means of the Koran and the jurisprudential discussions.

He discusses various matters such as the architectonic forms of the habitations in the pre-Islamic era, the pilgrimage that was sometimes performed nakedly, the men and women's attire, the different ways of sexual relationship, the level of hygiene, the question of women's seclusion in the first and following Islamic centuries. He also scrutinises different koranic verses XXXIII: 33, 34, 53, 59 and XXIV: 30, 31. The situation of the Prophet's wives and the prevalent view that women are completely *awra* and even the apparently irrelevant issues, like the attire of Adam and Eva, are examined in detail. He advances argument over different factors that have so far shaped restrictive politics with regard to women's attire calling the seclusion of the Prophet's wives a great lie.³⁶ Concerning the known Hadith attributed to Fatima that justifies the use of *pardah*,

³⁵ <http://baznegari.persianblog.ir/> (last accessed 29/07/2017).

³⁶ A. H. Torkashvand, *Hijab-e Shar'i Dar Asr-e Payambar*, Tehran, 1389/2010, p. 874.



Torkashvand courageously declares that, according to some reports, Fatima herself observed a less restrictive dress code compared to current Iranian women.³⁷

In the second chapter, he recreates the atmosphere of the first Islamic century through the Koranic verses.³⁸ Poverty, hunger, the absence of secure abodes, lack of drinkable water, melting heat and undisciplined sexual relationship were some aspects of life in the pre-Islamic Arabia that found their echo in the koranic verses.³⁹ Attires in that era were unsewn and due to the scarcity of cloth, they were not divided in different articles. Garments did not cover properly; therefore, even intimate zones could be exposed. People during hours of sleep and *tawaf*⁴⁰ were naked. The habitations did not have door and were not equipped with bathroom.

The great challenge that this book posed to the prevalent mujtahids' view stems from the amount of evidence that he extracts from the Koran for his claims. Torkashvand believes that during the Prophet's time, there was not any normative or shariatic way of covering. The change from folk veiling to normative one occurred because people in the following centuries thought that if infallible Imams had talked about the veil they wanted to confer it a normative quality. However, during the proto-Islamic period there was not any relation between religiosity and covering. There were circumstances in which men and women were not covered entirely. Nakedness was not a sign of misbelief. The *ulama*'s sensibility increased with the progress of textile industry and architecture, when people gained access to different pieces of cloths while homes became equipped with doors. These evolutions changed the meanings of words. The author thus offers a list of terms, like *jilbab*, *khimar* and *sitr* that over time have found new connotations.

The conclusion of the Torkashvand's long volume is that covering of the inferior parts of legs (from knees to feet), hands (from elbows to fingers), head and neck is not required by the authentic sacred texts. Women covered in chador and men in different pieces of cloths have become images of the proto-Islamic period to justify certain interpretations of the Koran and Hadith. Torkashvand's attempt is to demonstrate: first,

³⁷ Ivi, p. 876.

³⁸ Ivi, pp. 274-315.

³⁹ Ivi, pp. 274-288.

⁴⁰ It is one of the Islamic rituals of pilgrimage when Muslims in a counter-clockwise direction revolve around *ka'ba*.



attire in that time was far from what we have been taught in Iran; second, during the Prophet's government there was not a connection between religiosity and clothes. The book's main claim is that the interpretation of those koranic verses that regard women's attire without understanding the historical setting of their context of revelation will lead us astray.

5. Between *fiqh* and the modern world

The most confrontational approach with the Iranian regime on the questions relevant to the human and women's rights has been so far adopted by Mohsen Kadivar (b. 1959). Like Qabel and Ayazi, he pursued his *hawza* studies under Ayatollah Montazeri, however, he demonstrates some disagreements with the ideas of his late companion Qabel. He believes that in the interaction between *fiqh* and modern world, the former should adapt itself to the latter; otherwise, *fiqh* will be unable to respond to today's questions.

Kadivar assessed the phenomenon of the veil in five articles published on his website in 2013 under the title *Ta'moli Dar Massa'leye Hijab* (A Reflection on the Question of Hijab)⁴¹. He has examined this issue from different viewpoints: in the Koran, the Sunni Hadith, the Shi'a jurists' fatwas on women's attire and the Shi'a Hadith. What I report here includes only his argument about the Shi'a Hadith and the jurists' fatwas that correspond respectively to the second and the fifth part of the Kadivar's work.

a) Shi'a Hadith:⁴² Regarding Shi'a narratives, Kadivar has noticed that there is a quantitative difference in the accounts of central Imams (Muhammad al-Baqir, Ja'far al-Sadiq, Musa al-Kazim and Ali ibn Musa al-Ridha) on this issue compared to those of the Prophet and Ali. It means that the most reports that have come down to us from the Shi'a Imams on this topic can be traced back to the period that goes from 94 to 203 of the Islamic calendar.⁴³ Even though the quantity of the hadiths of these central Imams derives from the fact that they enjoyed more freedom that enabled them to make bigger

⁴¹ <http://kadivar.com/?p=10843> (last accessed 31/07/2017). This website is inaccessible in Iran.

⁴² <http://mkadivar.wpengine.com/?p=9411> (last accessed 31/07/2017).

⁴³ M. Kadivar, *Ta'moli Dar Massa'leye Hijab 2 (Hijab Dar Rivayat-e Shi'a)*, <http://kadivar.com/?p=9449> (last accessed 31/07/2017).



contributions to the Islamic knowledge, the quality of their narratives with regard to the veil testifies a change in the women's social status. Kadivar presupposes that the women's clothing only in the second Islamic century has gained its current restrictive form and in the first century followed the koranic guidelines. In the Koran indeed there is not any hint to the necessity of covering face, neck, forearms and legs.⁴⁴ In addition, if we take into consideration the type of questions that the followers of the four aforementioned Imams asked them regarding gender relations, it becomes clear that in the second Islamic century the norms of covering were not yet established, however, subsequently we have restrictive hadiths. According to the authentic reports of the sixth imam, free Muslim women should cover their entire body except for their faces and palms. Concerning other women, hadiths of Ja'far al-Sadiq confirm that during the Prophet's time, aside from slaves, women of some social strata, i.e. *ahl al-dhimmi*⁴⁵ and rural women were exempted from veiling and men were free to look at them.

Apart from the debate on the change that took place in the Imams' social context, another important Kadivar's achievement consists in his courage in demonstrating that even some commonly cited narratives attributed to figures like Fatima bint Muhammad, Amm Salma and the Prophet, to justify the obligation of the veil, are unauthentic. One of these repeatedly cited reports emphasises that it would be better for women not to see their non-*mahrms* and not to be seen by them.⁴⁶

b) The *faqih*s' fatwas:⁴⁷ In this section, Kadivar examines the ideas of fifty-four Shi'a jurists from the fourth Islamic century up to now. This fifth part of his careful and detailed study of the phenomenon of the veil has been divided in three subsections: the ordinances of gaze, the ordinances of attire and those concerning the relations of gaze and attire.

For centuries Shi'a jurisprudence continued to expand the limits of covering. In the tenth Islamic century a movement, whose standard-bearers were Muhaqiq Ardabili

⁴⁴ Ivi.

⁴⁵ Literally, "People of the Pact", it was an expression commonly applied to Jews, Christians and some others (Sabaeans, Zoroastrians and Hindus) who became subjects of the Muslim state. See G. Vercellin, *Istituzioni del mondo musulmano*, cit., pp. 29-32; B. Lewis, *The Muslim Discovery of Europe*, New York, W.W. Norton & Company, 1982, p. 63.

⁴⁶ In this essay, Kadivar reports two versions of this Hadith; one is attributed to the Prophet, the other, to Fatima bint Muhammad.

⁴⁷ <http://mkadivar.wpengine.com/?p=9639> (last accessed 31/07/2017).



and his pupil, Seyed Muhammad Musavi Ameli (d. 1630), started. They called into question the previous fatwas. Regarding the expression *illa ma dhahara minha* (except what [ordinarily] appears thereof) of the verse XXIV:31, Muhaqiq Ardabili in the *Zobdat al-Bayan fi Ayat al-Ahkam* emanated a revolutionary fatwa. In his view the interpretation of this expression depended on people's habits and customs; hence, it could not be confined to face, palms and feet. According to Kadivar, this is the most important fatwa about the veil in the Shi'a world for it entrusted the task of clarification of the limits of covering to the *urf*. Nevertheless, determination of what *urf* entails in a country with the political features of the current Iran is anything but simple. Which solution does Kadivar himself as a mujtahid propose for finding the right limits of covering? As a criterion, he suggests that the attire of foreign actresses who are allowed to be broadcasted on the Iranian TV and cinema can mark the limits of modesty in the current Iran. If those women can surpass the government's censorship it means that a woman who has covered her torso and legs but has left her hair uncovered is tolerable for the Iranian audience.⁴⁸

Another crucial issue to which Kadivar appeals in support of his view corresponds to the image of non-Muslim women in the *faqih*s' works. Since the fourth Islamic century, non-Muslim women, from the jurisprudential point of view, enjoyed the same status of slaves. It means that they were never supposed to comply with the standards of attire of Muslims, and looking at their bodies, without sexual intention, was not prohibited. The Muslim women who did not obey the rules of covering were always treated as non-Muslim and slave women. If these women do not observe the Islamic rules, no one can compel them to do so but men are supposed to lower their gazes in their relations with them.

In the third subsection of his enquiry, Kadivar tries to survey whether there is a correlation between ordinances of gaze and those of attire. As we mentioned, there are two types of *sitr*. Seyed Muhammad Musavi Ameli was the first *faqih* to underline the absence of correspondence between *sitr-e salati* and *sitr az nazer*. After him, most of the Shi'a jurists continued to argue that licit and illicit that regard gaze do not always correspond to the rules of covering. It means that not wherever the gaze is prohibited the

⁴⁸ This Kadivar's opinion on how to determine the limits of covering for the current Iran was expressed in 2007 in an interview published on his website. <http://kadivar.com/?p=2116> (last accessed 31/07/2017).



covering is required. An important example of this absence of conformity is that women should not look at men's body but men are not obliged to cover themselves. Kadivar concludes his in-depth survey with his observation on how *fiqh* in its history has always been permissive with men and limitative with women adding that:

The main problem in the question of the Islamic hijab is not the Koran and the Sunna, the main problem consists in the *faqih*s' definition of women, human being and society. [...] Ijtihad does not mean the repetition of the forerunners' viewpoints. Ijtihad means seeking access to the principles of the Book and the Sunna without clinging on to the customs and habits of the period of revelation and registration of the Hadith.

6. Female mujtahids

In the contemporary Iran there have been a few women who joined the rank of mujtahid.⁴⁹ Here I present only the ideas of two of them who are better known. Lived almost entirely in the pre-republican Iran, Sayyida Nusrat Beygum Amin (d. 1983) was a prominent scholar who possessed, inter alia, perfect knowledge of Hadith, *fiqh* and *usul* (principles of jurisprudence).⁵⁰ She did not live enough to experience the era of compulsory veiling and its consequences in Iran. Her male peers held Amin in high regard. When she was forty Ayatollah Abd al-Karim Ha'iri Yazdi, Ayatollah Muhammad Shirazi, Ayatollah Estahbanati and Ayatollah Sheikh Muhammad Reza Abu al-Majd Najafi Isfahani granted her the certificate for practicing ijthad. After having gained the permission of narrating Hadith from Ayatollah Abu al-Majid Najafi, she in turn granted it to other scholars such as Ayatollah Mar'ashi.⁵¹

⁴⁹ Zeynat Alaviye Homayuni (d. 2016), in 1977 received only the certification of narration of Hadith from her teacher namely Nusrat Amin. N. Tayyebi, *Zendegani-e Banuy-e Irani*, Qom, Sabequn, 1380/2001, p. 289. Today 80000 women are being trained within the female seminaries. Fariba Alasvand (b. 1967) is a mujtahid and teacher at the Woman and Family Research Centre. See F. Beaugé, "La revolución silenciosa de las mujeres iraníes", in *Nueva Sociedad*, 265 (2016), p. 139. One of the Alasvand's books has been translated in Italian under the title *L'Islam e la donna*, Roma, Irfan, 2012. Ma'soumeh Golgiri is another female *faqih* and teacher of the Jami'at al-Zahra of Qom. See R. Fazaeli, *Islamic Feminisms: Rights and Interpretations across Generations in Iran*, Oxford, Routledge, 2016, p. 58. For a review of the life of female religious authorities of Iran in different centuries see R. Badry, "Zum Profil Weiblicher 'Ulama' in Iran: Neue Rollenmodelle für "Islamische Feministinnen"?", in *Die Welt des Islams*, 40 (2000)1, pp. 18-38, for other names of the Iranian female mujtahids of the 20th century see M. Künkler, manuscript, cit., pp. 22-23.

⁵⁰ T. Cherāghi, "Lady Nusrat Beygum Amin", *Message of Thaqaalayn*, 14 (2012) 3, p. 113.

⁵¹ Ivi, p. 114



Amin was not particularly concerned about women or gender related issues. The only book that she wrote on gender questions is *Ravesh-e Khoshbakhti* (The Path to Happiness), in which, as a response to the ban of wearing the veil ordered by Reza Shah, she addressed her remarks to women who had abandoned their Islamic attire. In her discourse, such women would inflict an irreversible damage to society. Their act, in the Amin's view, was incompatible with Islam or even worse, it was a public declaration of enmity against this religion. Amin condemned the education of girls in a system where they were not supposed to wear the veil since this attire, in her view, was a "godly order" and its abandonment corresponded to "tearing apart the pages of the Koran into pieces".⁵² A woman could not associate herself with Islam, Amin argued, if she rejected this dress code.⁵³ According to Amin, women suffer from some deficiencies by nature, one of them is that they want to be vain, and hijab, in her opinion, can adjust this imperfection.⁵⁴

Zohreh Sefati (b. 1953) is the other prominent and officially recognised Iranian female mujtahid. Despite numerous difficulties and opposition of the clergy, she succeeded in following her Islamic studies in Qom. Sefati received her first permission of *riwayat* (transmission of Hadith) in 1996 and then was granted the permission of *ijtihad* as well. In 2013, she was appointed as juridical consultant of the vice president in Women and Family Affairs; an office that won her a great visibility given that since then all women and family related issues have been decided upon through consultations with her. In an interview with the International Koranic News Agency on the question of women's attire carried out in 2013, Sefati, who showed her complete awareness of the new debates on the interpretation of the sacred texts, recognised the fact that recently numerous scholars had casted doubt on the Koranic roots of the veil. Thus, she maintained that the koranic approach adopted by Motahari to prove the necessity of this garment, was not adequate anymore for the koranic verses that address the issue had been widely deconstructed and examined by mujtahids and secular authors both inside and outside

⁵² M. Rutner, "Religious Authority, Gendered Recognition, and Instrumentalization of Nusrat Amin in Life and After Death", *Journal of Middle East Women's Studies*, 11 (2015) 1, p. 31.

⁵³ Ivi, p. 119.

⁵⁴ M. Künkler and R. Fazaeli, "The Life of Two Mujtahidahs. Female Religious Authority in Twentieth Century Iran" in M. Bano and H. Kalmbach (eds.), *Women, Leadership and Mosques. Changes in Contemporary Islamic Authority*, Leiden and Boston, Brill, 2012, p. 142.



Iran.⁵⁵ As a result, she suggests that new methods should be adopted to answer the recent critics of hijab who challenge its imposition through new interpretations of the Koran and Hadith. In a conference held in January 2014 in the female *hawza* of Mashhad, she underlined two crucial issues concerning this phenomenon: the most cited and discussed problems in the study of the veil, namely the meaning of *khomor* and the limits of the women's displayable adornments. She maintains that *khomor* (plural of *khimar*) mentioned in the verse XXXIII:59, regards the covering of head and not bosom because *khamr* (alcohol) is a drink that remove reason from the head, therefore *khomor* has to do with head and not other parts of the body! She created in this way a connection between two etymologically unrelated words to support the necessity of the veil. Regarding the aforementioned expression of *illa ma dhahara minha*, she admits that the criterion for determining the limits of covering is custom. However, according to Sefati, only those social customs can be accepted as a source of law that do not contradict the reason and morality. One can see, thus, that she has in mind a non-historical, fixed and static definition of morality to which customs should adapt themselves.

Zohre Sefati has so far made some lukewarm attempts to challenge the dominant vision on the ineligibility of women for *marj'aiyyat* (the institute of religious authority among Twelvers). Nevertheless, the question is that if finally the *hawza* authorities reach a consensus to recognize the ability of women for *marj'aiyyat*, how much a potential female Source of Emulation, raised in such a cultural system, could make difference in the women's legal statues in Iran? How much a woman whose progress in the realm of *ijtihad* depends on the men's approval can produce dynamic *ijtihad* with regard to the women's rights in general and the question of hijab in particular?⁵⁶

⁵⁵ An interview of The International Koran News Agency (IQNA) with Zohreh Sefati, published on www.iqna.ir on 7 September 2013. In this interview, she emphasized that new interpretations of the Koranic verses that address the issue of hijab have to be elaborated with knowledge.

⁵⁶ Two examples that concern other women's problems in Iran can clarify the position of the Iranian women *mujtahids*. The issue of ineligibility of women for judgement is one of the infringement of women's rights in Islam. Although Amin did not share the idea of inferiority of women to men, she believed that women could practice their juridical skills only among their *mahrims* because the proper place of a woman is her home. See M. Künkler and R. Fazaeli, *op. cit.*, p. 143. The other example of the conformism of the women *mujtahids* is the position of Sefati regarding the age of marriage. The age of marriage in 2002 was set 13 years old for girls, which reflects the Sefati's opinion on this matter. See M. Badi'i, "Goftegu ba Faqih Pajuhandeh Banu Zohreh Sefati" (In Dialog with Zuhre Sefati), *Keyhan-e Farhanghi*, 199 (1382/2004), pp. 12-13. See also M. Künkler and R. Fazaeli, *op. cit.*, p. 157.



7. Final considerations

The male scholars mentioned here have created their works in a significant amount of time: roughly from the second to the third decade after the institutionalisation of compulsory veiling in the Iranian public space. The beginning of the 21st century is marked by the first public objection of a *hawza* male scholar to compulsory hijab that cost him death sentence, defrocking and years of imprisonment. Hassan Yousefi Eshkevari (b. 1950) was the first cleric to become victim of his own vision about compulsory veiling as he had challenged one of the Iran's taboos of the time.⁵⁷ Fifteen years later, a public debate organised in Qom on the Ayatollah Khamenei's behest hosted a cleric from the conservative front who called the compulsory hijab the grave mistake of the Islamic Republic of Iran.⁵⁸ If Qable in 2004 tried to challenge compulsory veiling denying the existence of any authentic Hadith that entailed its necessity, in 2013 his younger companion Kadivar, in a realistic move, confirmed the existence of authentic Shi'a narratives regarding this issue. Kadivar preferred to give priority to customs at the expense of the other sources of *fiqh*, instead of refusing to admit the existence of such narratives. Should these anecdotes be considered a sign of evolution in the vision of the *hawza* male elites about hijab? It is not clear. The only certainty is that such courageous interpretation of the sources of the Islamic law can never find any advocate within the women's *hawzas*.

It is imagined that if women had been given the chance of playing a more significant role in transmission of hadiths and if they had made bigger contributions to the formation of the Islamic law, infringement of their rights – such as compulsory veiling

⁵⁷ During a conference held in Berlin on 7-9 April 2000 Eshkevari raised jurisprudential objections to compulsory veiling. Upon his return to Iran he was arrested and accused of blasphemy and apostasy. Some English references to the issue are accessible in S. Vakil, *Women and Politics in the Islamic Republic of Iran. Action and Reaction*, London, Continuum, 2011, p. 72 and Z. Mir-Hosseini, "Hijab and Choice. Between Politics and Theology", in M. Kamrava (ed.), *Innovation in Islam. Traditions and Contributions*, Berkeley and Los Angeles, University of California Press, 2011, p. 202.

⁵⁸ Mohammad Reza Zaeri has both *hawza* and university degrees in his *résumé*. He belongs to the Usulgrayan (followers of principles) or conservative front, which is one of the Supreme Leader's strongholds. Based on two Khamenei's orders in 2001 and 2008, a series of meetings are occasionally held at different venues under the title *korsihaye azad andishi* (Forums of Liberal Dialogue). On 27 May 2015 he participated in one of these forums, held in Qom, as an expert (he has two books on hijab) and criticised the current policies of mandatory hijab. On May 9, he was interviewed by the Alef website on the same issue and admitted "I think it was one of the mistakes we made after the revolution". See <http://fa.abna24.com/service/session/archive/2015/05/27/688692/story.html> and <http://alef.ir/vdcew78wejh8fwi.b9bj.html?270224> (last accessed 31/07/2017).



– would not have taken place. In this article, we saw the position of seven contemporary Iranian scholars who have so far put forward their viewpoints about hijab. If the sacred texts that address this question are deconstructed and old pictures of the pre and proto-Islamic periods are revised by male mujtahids, female mujtahids, instead, have so far taken very conservative positions.⁵⁹ Their attitudes towards this issue evince the fact that in the current Iran the quality of the so-called dynamic *ijtihad*,⁶⁰ in extremely sensitive and politicised matters like women’s veil, depends on the way in which a jurist succeeds in receiving acknowledgement of his/her peers and not their gender.

The women’s eligibility for *ijtihad* has never been fully recognised or desired by the clergy. Before the Islamic revolution, male mujtahids were against women’s seminary education and were not willing to teach them.⁶¹ In 1993-94, almost a decade after the foundation of the Iran’s largest female *hawza*, called Jamai’at al-Zahra, at the Khamenei’s behest, the curriculum of the female *hawza* underwent a significant change. The lesson of *kharij*, which is the final and indispensable step towards *ijtihad*, was eliminated from the curriculum of Jamai’at al-Zahra to push female mujtahids towards non-judicial activities like *tabliq* (propagation)⁶². In Iran, women’s eligibility for rational elaboration of ordinances or *ijtihad* has been completely left to the clergy’s discretion. It becomes clear, thus, why Iranian female mujtahids, not only in the case of the veil but also regarding those questions that challenge women’s rational abilities – e.g. ineligibility of women for judgment, for the Majlis Khobregan (Assembly of Experts) and for *marj’aiyyat* – comply with the clergy’s discernment. Whereas, more pro-women fatwas have been so far issued by male mujtahids.

⁵⁹ Here I mentioned only the ideas of the two most well-known female mujtahids, but one can trace the question also among other female mujtahids. See for instance how Fariba Alasvand creates a bond between hijab and the koranic ordinances. See F. Beaugé, *op.cit.*, p. 139.

⁶⁰ The Iranian Twelver Shi’as boast about the fact that among them the “gates of *ijtihad*” have never been closed. Therefore, they are proud of the *ijtihad-e puya* (dynamic *ijtihad*) or *fiqh-e puya* (dynamic jurisprudence). See M.H. Abdekhodai, *L’ijtihad continua* on <http://islamshia.org/il-puro-islam-m-h-abdekhodai/>. See the invitation of Khomeini to the dynamic *ijtihad* in M. Khalafi, *Factional Politics in Post Khomeini Iran*, New York, Syracuse University Press, 2002, p. 77. The late cleric Muhammad Va’ezade Khorasani contended, “when we say *fiqh-e puya* it means an open and dynamic jurisprudence thereby we can resolve all economic, political and cultural problems of the society”. M. Va’ezade Khorasani, “Marj’aiyyat”, *Meshkat*, 45 (1373/1994), p. 9.

⁶¹ See M. Badi’i, *op. cit.*, p. 8.

⁶² *Ivi*, p. 18.



It is known that the majority of the Islamic ordinances have not been formulated on the basis of the Koran, but through a conciliation of the Koran with the customs of time by means of hadiths that sometimes contradict the Holy book.⁶³ Considering those Shi'a reports that place emphasise upon the priority of the Koran over the Hadith, on the one hand, and the elasticity of the Shi'a *ijtihad* (that I tried to demonstrate through the works of the five male scholars), on the other, we have a wide range of possibilities among Shi'as to review laws that directly affect women's social lives like veiling. The Iranian female mujtahids, however, can harness these possibilities only if they receive independence and freedom in the elaboration of legal codes. The formation of norms that clash with the women's human rights occurred in the period of the central imams of the Twelver Shi'as, or, according to Kadivar from the first half of the second Islamic century, when women could not have any voice in law-making. Nonetheless, as far as Iran is concerned, the absence of women in this field cannot be compensated by merely having them as mujtahids but through a different process of obtaining this title.

Men have never had to renounce their own rights to display commitment to the traditional *fiqh* in order to gain access to the office of mujtahid, whereas a woman, at least in her most visible aspect, namely her outer garment, and in her juridical elaborations concerning women, should give her full allegiance to what ayatollahs prescribe. As I tried to demonstrate through five different examples, *ijtihad* has endless possibilities to challenge the veil by means of the very traditional sources that have been adopted to impose it on women. These possibilities, however, cannot be actualised by women when the title of mujtahid is conceded to them merely as an extraordinary favour that hardly ever occurs and sometimes even the eligibility of the most prominent female mujtahids is cast into doubt.⁶⁴

Barazangi claims that experts should "let the Muslim women think for themselves in order that they may speak for themselves". Nonetheless, the violation of the women's rights, as I tried to demonstrate here with the instance of the veil, cannot be merely

⁶³ A. Barlas, *op. cit.*, p. 44.

⁶⁴ Even the title of Amin, the most knowledgeable female mujtahid that Iran has ever seen, was challenged by most of her male peers and even western authors call her a self-certified mujtahid. M. Fischer, *Iran: From Religious Dispute to Revolution*, Cambridge and London, Harvard University Press, 1980, p. 163.



remediated through the presence of mujtahids biologically recognisable as female. Where women have to be acquainted with a pre-existing system of values to obtain the certificate of *ijtihad* or to maintain their eligibility for this practice, their presence increase problems instead of resolving them. These female mujtahids lend themselves extremely well to instrumentalisation because, as their biological characteristics inevitably insert them in the same category of the victims of the *ulama*'s misogyny, they serve better the Islamic regime when they uphold the existing morale codes in their debates.⁶⁵ It is not for nothing that whenever an egalitarian reading of the sources of *fiqh* is needed, the Iranian women activists appeal to male mujtahids instead of the scholars of the same sex.⁶⁶

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⁶⁵ See the case of Nusrat Amin in Rutner, *op.cit.*, and the role of Sefati for determination of the age of marriage in Künkler, manuscript, cit., p. 22.

⁶⁶ The dependency of the Iranian feminists on men is highlighted by Roja Fazaeli. After an examination of the content of Zanan magazine from 1992 until its closure in 2008, Fazaeli concluded that those mujtahids who had given more relevance to the egalitarian aspects of the sacred texts were all men. See R. Fazaeli, "Contemporary Iranian Feminism: Definitions, Narratives, and Identity", in C. Raghavan and J. P. Levine (ed.), *Self-determination and Women's Rights in Muslim Societies*, Waltham, Brandeis University Press, 2012, p. 276. See also R. Fazaeli, *Islamic Feminisms*, cit., p. 58.