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Budrich UniPress

Changing Gender Norms in Islam between Reason and Revelation

Marziyeh Bakhshizadeh
Changing Gender Norms in Islam
Between Reason and Revelation

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Part One:
Understanding Changing Gender Norms in the Modern Era

1 Conceptualizing Gender, Religion and Islam

Women's movements in Islamic countries have had a long and arduous journey in their quest for the realization of what is called human rights and gender equality. In some of these countries, there has not been much progress beyond rudimentary issues (see Abu Zaid 1999: 106–109). Some of the problems that the women's movement in Iran still struggles with have been challenges for over a century, and which have not yet been overcome. An example is the right to guardianship of children, which grants the privilege of managing and supervising the affairs of children below the age of eighteen to their father or paternal grandfather, leaving the mother with no legal say in the matter. Furthermore, men in most Muslim countries (including Iran) are granted the right to polygamy, which allows a man to marry up to four wives.

One reason of not being able to change such laws is that these laws have been supported by religion. The experience of many western and non-western countries shows that discriminatory laws have existed all around the world throughout history. However, the question arises here of how in some countries discriminatory laws get abrogated through proving that they are unjust and inhuman with respect to women, but in many countries whose laws are based on Islamic law, it takes a long time to achieve even a tiny amendment of discriminatory laws.

Since the source of law in Islamic countries like Iran is claimed to be Islamic law, this raises the question of whether discriminatory laws against women do in fact originate from Islam and ultimately, if Islam is at all compatible with gender equality. To deal with this topic it is important to note that Islam is not a monolithic and homogenous religious tradition. There have been different interpretations of Islam, each having diverse views on the legitimacy and applicability of all Islamic law in modern times, and consequently having various perspectives on gender equality.

The main common feature throughout all different interpretations of Islam is that of emphasizing the fulfilment of justice in society as a central aim of religion in general and Islam in particular. Fulfilment of justice is mentioned in both the Quran and Muhammad's traditions (*sunna*); however, there was no given definition of justice in either the Quran or the *sunna*.

Accordingly, various interpretations of Islam offer different definitions of justice in which women's rights and gender equality inhabit different places. A look at the current situation of women in Iran as an Islamic country shows that women are still deprived of economic, political, and cultural rights. A woman, regardless of having reached the age of majority or her social position, requires

the permission of her father or her paternal grandfather to get married. A woman still needs her husband's permission to travel outside the country; her testimony is not acceptable in a court of law in many types of crimes and when it is accepted her testimony is not equal with a man's; and her life is less worthy than a man's by making her blood money[1] half that of a man's. Women do not have the right to choose their clothing; they are banned from being solo singers; and they are barred from entering stadiums to watch matches attended by men, among other prohibitions.

The question that arises from these circumstances is whether it is possible to claim to have a just society in which women are deprived of some of their fundamental human rights. Furthermore, is it justifiable to deprive women of these rights in some societies to defend the cultural and religious lifeworld[2]? Are concepts such as justice, human dignity, human rights and gender equality relative concepts which have different definitions in various locales of the world? Or are these concepts universal and should they be enforced with international support, regardless of particular cultural and religious conditions? The international debate within the United Nations has resulted in establishing universal human and women's rights, as in the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW[3]). In other word, these rights now are global consensus and not a Western privilege. Are they compatible with Islam and how do its most important currents relate to this?

The issues of gender justice and Islam have been debated in the social sciences and in society in general, enough to fill up whole libraries. Most authors followed a path of analyzing the provisions of the Quran on women and gender.

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[1] Blood Money *(diya/diyyah)* in Islamic law is the financial compensation one must pay to the injured person when he or she intentionally or unintentionally causes bodily harm or property damage to another. It can be paid to heirs of a victim in the cases of murder, in lieu of execution (Maurer & Mireshghi 2013: 90)

[2] The concept of the lifeworld (Lebenswelt) was introduced by Edmund Husserl in his book *The Crisis of European Sciences and Transcendental Phenomenology:*
"In whatever way we may be conscious of the world as universal horizon, as coherent universe of existing objects, we, each "I-the-man" and all of us together, belong to the world as living with one another in the world; and the world is our world, valid for our consciousness as existing precisely through this 'living together.' We, as living in wakeful world-consciousness, are constantly active on the basis of our passive having of the world... Obviously this is true not only for me, the individual ego; rather we, in living together, have the world pre-given in this together, belong, the world as world for all, pre-given with this ontic meaning... The we-subjectivity... [is] constantly functioning" (Husserl 1936: pp. 108–109).

[3] The Convention on the Elimination of Discrimination Against Women (CEDAW) was adopted on December 18, 1979. It was enforced on September 3, 1981, after being ratified by twenty member states. Currently, 189 states are parties to the convention and only six UN member states have not yet ratified or acceded to the Convention. These states include Iran, Somalia, Sudan, Tonga, Palau (signed on September 20, 2011) and the United States of America (signed on 17 July 1980). Signing the convention differs from ratification. The signature does not establish the consent to be bound, while ratification indicates a state's consent to be bound to the Convention.

They have been looking at their origins, their historic contexts and their potential adaptability to modern societies. Often the interpretations remain locked into a repetition of one's own position and a polarization with other positions.

I want to propose a new perspective on this old problem. We should look not at parts and sentences of sacred texts, but rather at gender in the context of Islam as a long term tradition and living religion.

Therefore, I analyze the different interpretations of women's and human rights by reconstructing the interpretations of three core issues. The first is the issue of religion, Islamic law and the Quran. The second refers to the view of human reason – and the potential endowment of men and women with it – as well as gendered rights, especially women's rights. The third issue is the view of human rights considering Islamic teachings and the universal norms of justice. These points provide an interrelated set of issues for a comparative analysis. They are seen in their interrelationship and referred to each other in the discussion.

The different currents in Islam have developed diverse combinations between reason, revelation and modernity, as shall be argued, and the concepts of gender inequality/equality should be considered in light of these relationships. Different interpretations of Islam are demonstrated in the main streams of Islamic thought including fundamentalist, reformist, and secular streams, in a sociocultural context. According to fundamentalists, since religion is aimed at managing human society and educating the human being, it is necessary to have rules and regulations in accordance with the requirements of society as well as human nature. These regulations and laws have inevitably remained the same throughout human history. This is because human nature is unchangeable. Changes can only be made in the manners and habits of human beings in the material world. Hence, the only one capable of legislation is one who knows the characteristics and the essence of human existence. In other words, only God has the right to legislate laws for human beings. As a result, the human being requires religion and revelation to manage his individual as well as social affairs, in order to reach salvation and felicity in social and individual life (Amoli 2010). Accordingly, fundamentalists reject the idea of the flexibility of law according to time and circumstance. Human beings need to rely on eternal and absolute values, as well as on a set of laws and practices that are beyond time and the wishes of fallible people. Such eternal law, according to fundamentalists, can be found in Islamic law aimed at the salvation of human beings in this world and in the afterlife (Mesbah Yazdi 1999).

Reformists aim to present an interpretation of Islam in which Islamic laws are compatible with modern concepts, such as human and women's rights. They apply different internal religious methods to address such modern concepts in *sunna* and the Quran. In this way, they offer an interpretation of Islam based on an egalitarian notion of justice, which is not only compatible with human rights and gender equality in general, but also acknowledge such concepts as essential for Muslim society.

Secular Muslims have emerged from the reformist view. It seems that reformists are gradually leaning towards more recognition of human reason and individual agency. According to this view, all people living in the modern era have different ideas and worldviews from people in traditional societies (Malekian 1381/2002). They do not aim at finding the modern concepts in *sunna* and Islamic law, but rather they believe that modern life needs modern means, which do not necessarily originate from *sunna* or the Quran. Such concepts are outcomes of human reason and are required to achieve justice in the modern era. They reject the text-based definition of being Muslim and emphasize the role of faith, spirituality and religious experience (Mojtahed Shabestari 1389/2010); therefore, I would call this school of thought *secular Muslim*.

The categorization of various interpretations of Islam is of crucial importance, for it provides a better understanding and knowledge of Islam, both in the Islamic and non-Islamic world. Globalization and the advancement of global communication no longer restrict Muslims and their issues to the Islamic world. On the one hand, the categorizing of different interpretations of Islam widens the space for discussion about Islam in the public sphere in the non-Islamic world, rather than to be silent on the topic out of fear of condemnation and being labeled an Islamophobe. On the other hand, it challenges the orientalist perspective that reduces Islam to an alien and aggressive religion, incompatible with modern views and concepts, such as human rights and gender equality, and generalizes all Muslims as retrogressive, fanatical and bigoted. This orientalist perspective, however, is also sometimes based on one of the most visible and prevalent interpretations of Islam, which legitimatizes its violence and opposition to human rights and gender equality through referring to some verses mentioned in the Quran, some parts of the prophet's tradition (*sunna*) and Islamic jurisprudence (*fiqh*).

This book aims to investigate the different interpretations of Islam to find out which interpretations are compatible with the global norms of justice and human dignity, and hence in accordance with women's rights and gender equality. It also reflects, according to those interpretations, that a belief in the concept of gender equality is not against religious faith and being Muslim.

Accordingly, Chapter Two presents different definitions of religion in sociology and introduces the debate on the secularization thesis. Then I proceed with an explanation of fundamentalism as a reaction to secularization. After a brief historical overview of the most important concepts, the chapter discusses the theories of Peter Berger and Thomas Luckmann about religion, in order to investigate the dialectical relationship between society and human beings and accordingly, the dialectical relationship between individual agents and religion. It also examines how this dialectical relationship can be disrupted, which causes a crisis of meaning, in that religion is unable to offer a value and meaning system to satisfy the human needs of meaning and spirituality. The dialectic relationship between individual agent and religion, and their roles in building identity in modern society, is further investigated through the Structuration Theory

of Anthony Giddens. It is followed by a discussion of the theory of recognition and its contemporary advocats, including Axel Honneth and Nancy Fraser, which allows for the discussion of the of concept justice and its relation to the concept of self-realization. The proceeding section deals with the question of how a practical aspect of recognition theory as a concept of cosmopolitan norms of justice incorporates in international conventions such as the Universal Declaration of Human Rights (UDHR) and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), as discussed by Seyla Benhabib.

I propose a theoretical model through synthesizing these theories, which aims to support a theoretical analysis of main streams of Islamic thought as well as provide an outline for expert interviews with representatives of each group of Islamic thought, which took place during the empirical research phase. According to this theoretical model, this study aimed to investigate the main currents of Islamic thought in three subjects. The first group deals with the concept of the individual and human reason, and aims to present the perspectives of each stream of Islamic thought on the equality of men and women. The second concept is that of religion as structure. The definition of religion and the approach to the Quran and *sunna* as the source of revelation and Islamic law shall be debated here. The third concept is perspectives on the UDHR and CEDAW and their acceptability in different interpretations of Islam. These points provide a theoretical model for a comparative analysis in second part of the book.

The methods applied in this research project, including comparative and documentary methods as well as the qualitative method of expert interviews, are introduced in Chapter Three. The methods of sampling the representatives of the main currents of Islamic thought, the designing of the guidelines of the interviews as well as the methods of analyzing the interviews are explained in this chapter.

Chapter Four offers a brief history of the rise and fall of women's rights within Iran's legal system since the beginning of the constitutional revolution in Iran between 1905 and 1911, when women were deprived of socio-political rights, through to the era of Reza Shah, who tried to modernize the country by banning Muslim women from wearing the veil. It is preceded by a brief summary of the struggles of women for their suffrage and the establishment of the Family Protection Law (FPL) in the reign of Mohammad Reza Shah, and the regression of some women's rights in both public and private realms after the revolution of 1979, claimed as being based on Islamic jurisprudence. The historical overview of changes in women's rights ends with a synopsis of the situation of women in different eras of presidency in Iran after the revolution, until the first era of presidency of Hasan Rouhani (August 2013–2017).

The second part of the fourth chapter presents a historical overview of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), as well as an investigation of the current state of women's rights within the legal system of the Islamic Republic of Iran. This shall be done through a comparison of Islamic law vis-à-vis the provisions in CEDAW, in order to gain a schema of the current legal situation of women in Iran.

Chapter Five introduces fundamentalist, reformist, and secular perspectives on the position of women, presented through research in various Islamic countries. It also offers some aspects of the historical development of the main streams of Islamic thought. Despite significant regional and political differences among such various Islamic perspectives, they have certain similar features which are explained in this chapter. In this way, this chapter provides an introductory explanation of current research on women in different interpretations of Islam, so that I can present the foundation and substructure of the main currents of Islamic thought through a sociological perspective. This chapter also offers a brief historical review of the most important schools of theology in Islam – Mu'tazili and Ash'ari from the second century AH (*after hijra*, approximately the eighth century AD), which is essential to gaining a better understanding of the arguments of the main streams of Islam in the modern era.

The second part of the book, consisting of Chapters Six, Seven, and Eight, provides a comparative analysis of the groundwork and fundamental arguments of the main currents of Islam – fundamentalist, reformist, and secular – applying the theoretical model presented in Chapter Two to the three core issues. To recap, these issues are religion (Islamic law, the Quran and *sunna*), individual agency (human reason), and global norms of justice and human dignity (CEDAW, UDHR). The book concludes with Chapter Nine, presenting the outcomes of this study of changing gender norms in Islam – between reason and revelation.

2 Towards a Theoretical Model for Changing Gender Norms in the Main Streams of Islamic Thought

The overarching goal of this research aims to study women's rights in four categories – family, economic, political and cultural – from the perspectives of the three main Islamic schools of thought (fundamentalist, reformist and secularist) in Iran since the 1979 Revolution. To this aim, I propose a theoretical model by synthesizing theories of the sociology of religion (Peter Berger and Thomas Luckmann), sociological action theory (Anthony Giddens' structural theory) and struggles related to universal norms of justice (Nancy Fraser, Axel Honneth, Seyla Benhabib). This theoretical model shall support a theoretical analysis of the main streams of Islamic thought, as well as provide an outline for expert interviews with representatives of each group in the empirical section of the research.

2.1 Religion in Sociology

To discuss theories of the sociology of religion, a definition of religion is required. Over the centuries, different scholars have commented on what religion is; nevertheless, there is no consensus about which definition fully encompasses this complicated concept. Some definitions have been very narrow and have tended to exclude some forms of beliefs and practices which seem to be religious for other scholars, while other definitions have been as vague and general as to include other areas of human sciences like law, psychology, philosophy, etc.

Substantive and functional definitions of religion

The various definitions of religion are categorized in two groups. First, *substantive*, which refers to the essence and nature of religion, while the second focuses on the *functional* elements of religion – what religion does. Roberts and Yaman (2012) elaborate the features of these two types of definitions. The substantive definition, as they explain, emphasizes a specific belief in a supernatural realm. The substantive definition was used in 1873 by Edward B. Taylor

(1958: 8 cited in Roberts & Yamane 2016: 3). He defined religion as "belief in spiritual beings." He regarded the term *spiritual beings* to be more inclusive than belief in *gods* (ibid.).

Durkheim also provides a substantive definition of religion in his book *The Elementary Forms of Religious Life* (1912) as "a unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden – beliefs and practices which unite into a single moral community called a church, all those who adhere to them" (Durkheim 1992 (1912): 62). The substantive definition also distinguishes sacred from profane realms of experience and focuses on what the sacred is. That is the special feature of religion for Durkheim, which helps in the recognition of religion in different cultures since people's attitude towards religious rituals differs from their everyday experiences: "the religious life and the profane life cannot coexist in the same unit of time: it is necessary to assign determined days or periods to the first, from which all profane occupations are excluded. […] there is no religion, and, consequently, no society which has not known and practiced this division of time into two distinct parts" (Durkheim 1912 (1995): 347, in: Roberts and Yamane 2016: 4). In this way, Durkheim also recognizes the sacred attitude as a group experience; therefore, religion is a common activity (Roberts and Yamane 2012: 4–5). Accordingly, Durkheim was most concerned with the relationship between religion and society; hence, he moved beyond an individualistic depiction of religion. Substantive definitions are more focused on traditional forms of religion, and are therefore unable to explain the new ways of religiosity in complex and changing societies (ibid.: 18).

An alternative to substantive definitions of religion are *functional* definitions. Milton Yinger suggests that we focus on what religion does rather than what religion essentially is: "it is not the nature of belief, but the nature of believing that requires our study" (Yinger 1970: 11 in: Roberts and Yamane 2012: 7). William James (1979) offers a functional definition of religion through an understanding of the subjective experience of individuals involved in religious practice. In his point of view, religion pertains to "feelings, acts and experiences of individual men [sic] in their solitude, so far as they apprehend themselves to stand in relation to whatever they consider the divine" (1979: 50, quoted in Hafez 2011: 31).

The functional definition, as Roberts and Yaman explain, considers religion as a provider of "a sense of ultimate meaning, a system of macro symbols, and a set of core value systems"(Roberts and Yamane 2012: 18). Paul Tillich (1957) offers a functional definition of religion: "Religion, in the largest and most basic sense of the word, is ultimate concern" (Tillich 1959: 7–8) and "our ultimate concern is that which determines our being and non-being. […] Nothing can be of ultimate concern for us which does not have the power of threating and saving our being" (Tillich 1973: 14). This concept of 'ultimate concern' was developed by Milton Yinger (1970) as underlining the importance of meaning systems to "understand the purpose of life and the meaning of death, suffering, evil,

and injustice", which provide human beings with a strategy to overcome the major concerns of human life, including futility and despair (Roberts and Yamane 2012: 7).

In this definition, religion can be considered as a resource to provide a meaning system with different dimensions, such as a shared world view, as well as the Ritualistic dimension (religious practice); the Experiential (religious experience and emotions); the Intellectual (religious knowledge); the Social (institutional organization of the religious community); the Ethical (formal and moral laws); and a set of routinized social expectations and patterns (Reich 2011: 283; Roberts and Yamane 2012: 12).

The considerable point here is how meaning systems are created throughout human life. Here 'time' plays a relevant role in the equation. As Droogers (2011) says, "disciplines and theories change in the course of time, therefore, every era will produce its particular definition of religion." Hence, it would be a mistake to ignore the era's conditions, such as modernism and its consequences, or the process of the secularization thesis. Talal Asad also emphasizes that the "terms 'religious' and 'secular' can be understood only in relation and opposition to each other. Thus, any redefinition of the secular necessarily involves a redefinition of the religious, and vice versa" (in Van Antwerpen 2012: 7).

Therefore, the debate on the secularization thesis has crucial significance for the definition of religion in the sociology of religion, even though it may influence that definition (Droogers 2011: 269). In what follows, the concept of secularization shall be elaborated in order to gain a broader perspective of the concept of religion in the modern era.

The definition of secularization

The term 'secularization' was first used by George Jacob Holyoake in 1846 to explain a social order separated from religion.[4] The term secularization was not used directly in classical Sociology. However, it can be traced in the works of the fathers of sociology – Auguste Comte, Herbert Spencer, Max Weber, Emile Durkheim and Karl Marx. They were all convinced that the consequences of the Enlightenment and industrialization would lead to the decline of the religious. For example, Comte recognizes three stages of human society, from the theological stage to the metaphysical stage, and finally to the fully scientific stage. Eventually, science (and especially sociology) would replace religion. Similarly Weber, with the concept of *rationality*, Durkheim with the concept of *differentiation*, and Tönnies with the concept of '*Gemeinschaft-Gesellschaft*' provided a basis for further developing the term 'secularization' by later generations of sociologists like Peter Berger, Thomas Luckmann, and Bryan Wilson (Stolz

[4] Catholic Encyclopedia.Secularism. Available at: http://www.newadvent.org/cathen/13676a.htm

and Könemann 2016: 11–12; Dobbelaere 2011: 599) in the second half of the twentieth century.

The definition of secularization has changed throughout history, especially insofar as some speak of *neo-secularization*. The initial point of secularization refers to a societal level – when subsystems in modern societies differentiated from each other because of their particular function, such as economy, polity and science. Every subsystem has its own autonomy, values and norms, rejecting religious autonomy and value systems. Therefore, secularization refers to the decline of religious authority over other subsystems, an outcome of modernization, and it leads to the development of "functional rationality" (Dobbelaere 2011: 600). For example, 'charismatic' authority barely has a place in a rationalized political system, and a cost-efficiency basis ousts religious ethos in the economy. The development of science also induces a scientific approach to the world rather than religious explanations which impact people's everyday life and individual minds. This ultimately means the decline of religious beliefs and practices in individual life. Therefore secularization can be considered as a process that started in a macro, societal level and continued into to micro, individual levels of analysis (Dobbelaere 2011: 600–601). However, in reality religion continues to be powerful at the individual level and also at a societal level. As Berger (1999) argues, "the world today, is as furiously religious as it ever was, and in some places more so than ever" (Berger 1999: 2).

Berger has revised his opinion on promoting the secularization theory and emphasizes the continuity and upsurge of religion in the modern world. In his point of view, there is no inevitable link between secularization on the societal level and secularization on the level of individual minds. Perhaps some religious institutions lost their influence as a result of modernity, but both old and new religious beliefs and sometimes institutions continue to have social and political significance. Therefore the relation between religion and modernity is not as simple as the secularization theory of the 50s and 60s would have it, when it was assumed that modernization necessarily leads to a decline of religion, both in society and in the individual consciousness (Berger 1999: 3).

Some theoreticians, such as Bryan Turner, tried to offer a more precise definition of secularization, by distinguishing 'political secularization' from 'social secularization'. In his point of view, political secularization refers to the public domain and political regulation; it is a historical process of separation of church and state, defining the place of religion in public life. Social secularization deals with values, culture and attitudes which are demonstrated in forms of rituals and practices and sites in the social sphere. Therefore, while a state is able to enforce religious regulation in the political sphere, it is difficult to restrict the social functions of religion and control it in the social sphere. It is therefore important to distinguish which kind of secularization is meant within the debate on secularization (Turner 2010: 651–654).

José Casanova (2006) also explained secularization using three different definitions. First, the most popular definition: that of a decline of religious beliefs

and practice at the individual level. Second: the privatization of religion, arguing that today, "we are witnessing the 'deprivatization' of religion. […] Religious traditions throughout the world are refusing to accept the marginal and privatized role which theories of modernity as well as theories of secularization had reserved for them" (Casanova 1994: 5). The third definition refers to classic theories of secularization which defines it as the differentiation of the secular spheres (state, economy, science), usually understood as 'emancipation' from religious institutions and norms at the societal level. Casanova argues that these definitions are differently applied in the debate on secularization in the United States or Europe. Perhaps the traditional theory of secularization is proper for Europe or more precisely in some parts of Europe, but not for the United States or for other parts of the world.

Another definition of secularization is provided by Charles Taylor. He does not reject the idea of declining practices and declared belief in many countries per se; rather he explains that such decline depends on how religion is identified. Religion as 'historic faith' or 'explicit belief in the supernatural' seems to have declined, but religion as a 'wide range of spiritual and semi-spiritual beliefs' or as 'the shape of ultimate concern' is still present. Therefore, Taylor also believes that religion has not declined at the individual level; perhaps the earlier forms of religion have been destabilized and marginalized, but religion has arisen in new forms (Taylor 2007: 426–427). Therefore, it would be more helpful to consider Pluralism and, as Berger claims, "instead of continuing the debate in terms of decline or persistence, they have identified pluralism, diversity and fragmentation as more fruitful ways of thinking about religion today" (in Fox 2010: 315–316) Many people today still believe in God and still ascribe to a certain religion without accepting the crucial dogmas in it – what Grace Davie calls 'believing without belonging' (Davie 1990). In this process, religion also tries to redefine and recompose itself in various ways (Taylor 2007: 513–514).

To define secularity Taylor refers to several ideas and then supplements them further. He locates the concept of the secular in earlier ideas such as in classical or medical accounts that deal with the realm of 'earthly' politics and 'mundane' vocations, contrasting the secular with the sacred. He also reflects on secularization theory and its application to the societal and individual level where religion and religious belief and participation have a decreased significance in public spaces, and are being replaced with universal, neutral rationality as a consequence of modernity. In addition, secularity results in the decreasing importance of religious belief and practice in everyday life (Taylor 2007).

But Taylor offers another definition of secularity, which is considered by some theoreticians such as James K. A. Smith (2012) as a basis for describing a new epoch, namely the 'post-secular age'. In his definition Taylor underlines the new conditions of belief. A secular society is where religious belief and belief in God is considered as one disputable option among others for the individual. "The shift to secularity in this sense consists, among other things, of a move from a

society where belief in God is unchallenged and indeed, unproblematic, to one in which it is understood to be one option among others, and frequently not the easiest to embrace;" (Taylor 2007: 3) therefore, this definition of secularization deals with how 'plausibility structures' of modern societies make religion contestable, rather than with the waning of religion in late modern societies (Smith 2012: 163–164). Taylor claims that this new context prevents the naïve acknowledgment of transcendent and naïve religious faith.

The remarkable point is that in Islamic societies, despite the obvious influence of the secular attitude, secularity is forced to be privatized, while religion plays the central role in the public sphere. Nonetheless, secularity can be traced in different parts of the life-world, including individuality, cultural changes and religious rationality. Hence, it is essential to study secularity even in strongly religious societies such as Islamic countries (Burchardt et al. 2015: 11–12). However, clarification of different concepts of 'secular', 'secularism' and 'secularization' is required in order to apply the proper term in such societies.

Secularism is defined as "a political doctrine" (Asad 2003:1) that refers "to the arrangements of the institutional separation of politics/the state and religion as well as to their ideological legitimizations" (Wohlrab-Sahr and Burchardt 2012: 880). The concept of secularization refers to"sociological process models addressing processes of functional differentiation, religious decline, and privatization of religious practice" (ibid.). Secular as "an epistemic category" (Asad 2003:1) is considered as "an analytical term for the culturally, symbolically, and institutionally anchored forms of distinction between religious and non-religious spheres and material spaces" (Wohlrab-Sahr and Burchardt 2012: 881) Therefore, 'the secular' is conceptually prior to the political doctrine of 'secularism' (Asad 2003:16), and is more inclusive. The concept of the secular is not confined to the relation between religion and state, but also includes other dimensions of society and the public sphere (Wohlrab-Sahr and Burchardt 2012: 881). In this regard, secularity is considered a result of social conflicts related to transforming the social sphere and religion, rather than an antireligious or irreligious attitude (ibid. 904). It demonstrates itself beyond institutionalized rules, in the public discourse and the scope of everyday life. In other words – "people's life-worlds, with their multiple forms of embodying religious and secular ways of being, knowing and sensing" (Burchardt et al. 2015: 5).

Accordingly the concept of secularity, as Wohlrab-Sahr and Burchardt (2012) explain, can take different structures in various societies. They use the concept of "cultures of secularity" as well as "multiple secularities" to refer to "new ways of thinking about the relationships between religion and secularity in modernity that go beyond secularization theories" (ibid.). Perhaps cultures of secularity do not exist all over the world; but rather depend upon social and political conditions; nevertheless, they emphasize that considering conceptual space for an analysis of secularity is of crucial importance, even in strongly religious societies (ibid.: 6). Accordingly, this book aims to investigate the concept of secularity in an Islamic context.

Fundamentalism is regarded as a reaction to secularization which is not restricted to the West and Christianity, but also to Islam. Before exploring the applicability of such ideas for religion, particularly in the Islamic world, fundamentalism shall be explained in the following section.

The definitions of fundamentalism

The term 'fundamentalism' is widely applied to regional, national, and even global developments which hold both religious and political dimensions, and which is traceable in all religions and in every major faith, including Christianity, Judaism, Islam, Hinduism, Buddhism and Confucianism (Armstrong 2002, Afary 1997). Fundamentalism is a controversial term, with many-layered meanings which it has attained on its uneven trajectory across cultures, interest groups and disciplines.

Fundamentalism as a term was applied in 1910 for a series of articles by conservative American Protestant Christian authors under the title *The Fundamentals*, in order to "defend biblical inerrancy; attack the so-called European 'higher criticism' that began to examine scriptures from purely philosophical (historical-linguistic), archeological, and anthropological perspectives; and refute or counter assorted related threats" (Shupe 2011: 478). Thus, the fundamentalists offered a narrower definition of conservative Christian orthodoxy against the efforts to reconcile traditional Christian beliefs with new developments in the natural and social sciences.

As this concept entered into the public discourse, in particular since the 1970s, it has clearly exceeded its narrow origin concerning U.S. Protestants. Fundamentalists took on political activism and identity politics that concerned events that resulted from modernism, such as the legalization of abortion, the sexual revolution, the gay rights movement, and the removal of religion from public education, or that challenged traditional gender roles, or caused moral questions (Nagata 2001). It was claimed that with modernity, human beings became more rational, and hence religion was not required anymore, or perhaps would be restricted to a private sphere of human life. Fundamentalists rejected this view of religion and tried to bring it from its marginal position back into mainstream society. This reaction was not confined to conservative Christian orthodoxy, however, but was also common in the other major religions of the world. In fact, emerging threats from Islamic groups and organizations such as the Taliban, Boko Haram, and the Islamic State, created by fundamentalists, introduced Islamic fundamentalism as the strongest stream of fundamentalism (Wenzel 2011: 180–182).

Some scholars use the term 'fundamentalism' to refer to religious revival movements outside the Protestant tradition, while other scholars are reluctant to use the term to refer to cultural and political movements based on religious tradition with the same features. Some scholars utilize terms such as the 'New Religious Politics' (Kaddie 1998); Islamism (Göle 1996; Krämer 2011); or In-

tegrism and Political Islam (see: Steinbach 2004). For some, employing fundamentalism to Islamic political movements is recalling another variant of orientalism, in keeping with the process of Othering (see Edward Said: *Orientalism,* 1978). "In Said's view, by constructive reductive notions of 'terrorism' and 'fundamentalism,' the West has attempted to claim for itself 'moderation, rationality' and a specific Western ethos" (Afary 1997).

The term fundamentalist is also used, albeit irresponsibly, to address any group that takes religion seriously and even to address all Muslims, as Nagata (2001) and Emerson and Hartman (2006: 128) explain. Some studies do not distinguish reformist movements from fundamentalist movements, and identify all Islamic revival movements as fundamentalist or as part of fundamentalist movements (Wegner 2008; Köhler 2008). Some speak of 'new-age fundamentalist reform movements' – die neuzeitlichen fundamentalistischen Reformbewegungen – (Kienzler 2007).

In contrast to this view of fundamentalism, other studies draw attention to the distinction between various groups of Islamic revival movements (Riesebrodt 1990: 148; Göle 2004). Riesebrodt's (2000) definition of fundamentalism is

> a specific type of religious revival movement which reacts to social changes perceived as a dramatic crisis. In such a movement people attempt to restructure their life-worlds cognitively, emotionally, and practically, reinvent their social identities, and regain a sense of dignity, honor, and respect. But, such goals are achieved in fundamentalism in ways which are different from other types of religious revival movements (Riesebrodt 2000: 271)

After the 1979 Revolution in Iran, Islamic fundamentalism drew more academic and political attention (Nagata 2001: 486). Riesebrodt (1990) regards fundamentalism in post-revolution Iran as a form of patriarchal traditionalism that, as a result of state-driven secularization in Pahlavi's era, recalls for a return to a 'book-centered' religious order. Therefore, it not only renewed patriarchal controls on women and gender roles, but it also revived paternalistic authority in politics and the economy.

The first comparative study of fundamentalist movements was completed by Bruce Lawrence in 1989, entitled '*Defenders of God: The Fundamentalist Revolt Against the Modern Age.*' As Emerson and Hartman (2006) explain, Lawrence argued in his book that "fundamentalism is an ideology rather than a theology and is formed in conflict with modernism" (Emerson and Hartman 2006: 130) In a comprehensive study named 'The Fundamentalism Project,'[5] the same features of fundamentalist movements were found across faiths, including; em-

[5] The book series *The Fundamentalism Project* published by the University of Chicago Press, was sponsored by the American Academy of Arts and Sciences and directed by religion historians Martin Marty and Scott Appleby from 1987 until 1995. The project was aimed at investigating fundamentalist movements throughout the world.

bracing technological innovation; opposing relativism and pluralism; believing the absolute 'truth' lies only with them; and endowing themselves with the authorization to enact the divine will and the 'universal blueprint' for human salvation. As a result, fundamentalists see themselves as agents of a sacred power and are often intolerant of dissidents within and outside the community of believers. Regarding the texts of a tradition, fundamentalists are 'consistently anti-hermeneutical' and reject every hermeneutical interpretation of scripture (Marty 1988).

Among the fundamentalist movements, Islamic fundamentalism seeks a worldview based on a golden age, with a 'utopian and past-oriented' perspective (Eisenstadt 1996, cited in Moghissi 1999: 71; Göle 1996), seeking fulfillment of Islamic law in a contemporary society without any adjustment to the contemporary needs of human beings. Islamic fundamentalism is defined as a movement aimed at 'establishing an Islamic sociopolitical order' through fulfillment of the Islamic law; therefore the unity of religion and politics in Islamic government is defended (Moaddel 2008: 1676–7). Similar to other religious fundamentalists, Islamic fundamentalists believe that "the focus of moral authority is God and that legal codes should reflect absolute and timeless divine law" (ibid.: 1680). However, Islamic fundamentalists have often interpreted divine and Islamic laws as their political projects dictate (ibid.). Losurdo (2004) describes a characteristic of Islamic fundamentalism as protection of "the Islamic identity from contamination and interference. The point is to put an end to centuries of ruinous religious subversion. This is a protection, a kind of 'cultural cleansing,' against all Western political tendencies" (Losurdo 2004: 11).

Fundamentalism in Islam became generally known with the establishment of the Muslim Brotherhood by Hasan Al-Banna in Egypt in 1928. The purpose of creating the Muslim Brotherhood was not only to fight colonialism and liberate Muslim societies from the West, but also to replace the materialist philosophy of Europe in an Islamic country with the culture, civilization and philosophy of Islam which was presented by the first generation of Muslims (Said Aly and Wenner 1982: 340). Al-Banna, the founder of the Muslim Brotherhood, posited the dislodgment of true Islamic tradition as the cause of decadence in the Muslim community. He pointed to the Quran and tradition of the Prophet (*sunna*) as resources of Islamic rules for every Muslim and says:

> Islam is a comprehensive system which deals with all spheres of life. It is a state and a homeland (or a government and an *Umma*). It is a moral system and power (or mercy and justice). It is a culture and a law (or knowledge and jurisprudence). It is material and wealth (or gain and prosperity). It is (Jihad) and *Da'wah* (or army and an idea). And finally, it is true belief and worship (Al-Banna n.d.: 7).

Therefore, Islamic principles must be implemented in all aspects of public life as well as in political, economic and ideological dimensions. This ultimately leads to a truly Islamic government, obliged to enforce Islamic law alongside

other responsibilities. It is also necessary to instruct the world about Islamic ideology "by spreading the call of Islam to all corners of the globe until there is no more tumult or oppression and the religion of Allah prevails" (ibid.) He also defines *Jihad* as a means to struggle in the 'Way of Allah' which has various forms including "struggling with the tongue, pen, or hand, and speaking a word of truth to a tyrannical ruler" (ibid.: 16–17).

This argument has been maintained by Islamic fundamentalists up to the present day. However, it should be noted that this is not the only reaction to modernism and secularization from the Islamic world; there have been other reactions, such as reformist efforts as well as secular perspectives, especially after the 1970s-80s. These were based on the debate on the separation of politics and religion, or the separation of religion and the public sphere. It is evident in some Islamic countries that recognize themselves as secular and confine Islamic law only to family laws like marriage, divorce, custody, and inheritance. John L. Esposito (2002) also explains that many modern Muslim states have been influenced by Western secular paradigms in their development's programs. Therefore, in some modern Muslim countries "the role of Islam in state and society as a source of legitimation for rulers, state, and government institutions was greatly decreased though the separation of religion and politics was not total" (Esposito 2002: 2).

Therefore, concepts such as secular, fundamentalism and reformism cannot not be only restricted to Christianity and the West, though it is of crucial importance to distinguish the context when applying these concepts. Casanova also explains in such debate "one needs to make clear the terminological and theoretical disagreements. Most importantly, one needs to historicize and contextualize all categories, refocus the attention beyond Europe and North America, and adopt a more global perspective" (Casanova 2003: 17–29).

Accordingly, the theory of Peter Berger and Thomas Luckmann on religion, as well as the impact of globalization and pluralism as outcomes of modernity on religion and individual freedom shall be discussed in the following pages, though their theory was formulated for explaining religion in the West.

2.2 The Dialectical Relationship Between Religion and Human Being: Pluralism, Rationality and the Crisis of Meaning

I will consider Peter Berger's and Thomas Luckmann's analysis of religion as a historical product which is constructed by human experience, even when it is considered as divine.

Peter Berger and Thomas Luckmann, in their work *The Social Construction of Reality* (1966), define society as a dialectic phenomenon. They argue that society is a human product of human collective activities. They also emphasize

that human beings are likewise the product of society, such that the individual's identity is shaped by social processes.

In Berger and Luckmann's analysis, society consists of a dialectical process between externalization, objectivation and internalization. "Externalization is the outpouring of human beings into the world, both in the physical and the mental activities of men [sic]" (Berger 1967: 3). It refers to every process in which subjective meaning in consciousness is constructed and then externalized, thereby creating the sociality of the individual (Knoblauch 2005: 137).

Objectivation refers to the creation of a reality by human physical and mental activity that confronts its original creators as an external facticity other than themselves. Through objectivation, human beings create institutions, interactions and other things which all together form culture. These outcomes of human activities appear as objects which can exist independently from human activities. Even religion and language, which appear to be natural or divine, are human products that are objectified and have become realities independent from human activities (Knoblauch 1999: 112). Based on the process of objectivation, Berger posits that, "all religious world-views are the products of historically conditioned and constructed human experience, whether they posit a divine revealer or not" (in Dorrien 2001: 33).

Internalization occurs when this objectivized reality is re-appropriated by human agents, transforming it from the structure of the objective world into the structure of subjective consciousness. Berger and Luckmann consider internalization as a basis for understanding others and also for the apprehension of the world as a meaningful and social reality (Berger and Luckmann 1966: 150). It enables individuals to shape their personal identity through the internalization of socially objectified schemes of activities and their related meanings, that lead ultimately to the integration of individuals in the social world (Luckmann 2002: 28–29).

Based on this schema, Berger deduces that society is produced through externalization, it becomes a reality through objectivation, and human beings are defined as a product of society through internalization.

One of the processes of internalization, as Berger and Luckmann (1966) explain, is socialization that inducts the individual into the subjective world of society or a sector of it. Socialization allows the transfer of social reality, including culture and subjective meanings, from one generation to the next. Individuals therefore identify themselves with these meanings; they also represent and express meaning (Dorrien 2001: 31).

The crisis of meaning

Berger and Luckmann (1995) point out that meaning is constituted in human consciousness, so it is based on 'purely subjective apprehensions'. This subjective constitution of meaning is the origin of all social stocks of knowledge such as patterns of experience and schemes of action, resulting from the objectification

of the subjective meaning of experience or actions. They explain that "these socially objectified and processed stocks of meaning are 'preserved' in historical reservoirs of meaning and 'administered' by institutions" (Berger and Luckmann 1995: 18). In their view, older streams of social action ('traditions') are of crucial importance in shaping elements of meaning, and religion occupies a distinctive place in the objectification of meaning in social reality. In Berger's analysis religion aims to construct a value system based on a sacred cosmos. He says, "Religion offers a protective canopy of transcendent legitimacy, meaning, and order to the precarious constructions in human life" (in Dorrien 2001: 32). The value system – offered by religion – is objectified in the societal stock of knowledge.

Social stocks of knowledge provide objective meanings that shape the actions of the individual. Therefore, there is a constant interaction between objectified meaning and subjectively constituted meaning. When this interaction is disrupted and when objectified meaning and subjective meaning overlap and contradict each other, a *crisis of meaning* occurs. Accordingly, in societies which have a single and generally binding value system, the schemes of experience and action objectified in social institutions are directed towards a common value system superordinate to the specific meaning. Therefore the total stock of meaning stored and managed in social institutions is in basic concordance with practical life (Berger and Luckmann 1995: 18–24).

Such societies provide no ground for the growth and extension of crises of meaning, because there is no contradiction between the objectified and subjective meanings of the value system. These conditions are found in pre-modern societies where a value system offered by religion takes a central place. Berger and Luckmannn recognize religion in pre-modern societies as a symbolic remedy spreading throughout all of society, collecting all shared interpretations of reality into a coherent view of the world, which provide the foundation for societal morality (ibid.: 54). Since in pre-modern societies, the differentiation between diverse social functions is slight, religion; social structure; and personal identity overlap (Knoblauch et al. 2002: 26), and "religious representations are widely diffused among the various institutions" (Luckmann 1983: 129).

In modern society, however, the value system and meaning offered by religion are no longer the sole bears of superordinate orders of value for everyone (Berger and Luckmann 1995: 25–54), and this perhaps leads to the situation in which there is no longer concordance between objectified and subjective meaning, and therefore different values and orientations that are 'ultimately' significant for the individual are not massively and generally confirmed and supported by the social order (Luckmann 1983: 132). For example, it is possible that while religion and its value system could have a strong position in the social order, individuals may still look for a new value system which is not supported by religion, or vice versa. This provides the basic condition for the spread of crises of meaning. In fact, religion, which once legitimized the whole society, is no longer able to keep its old influence over other institutional sectors because of new issues experienced in the modern era. This sometimes leads to the differ-

entiation of the social structure in specialized institutions, implying a profound change in the relationship between individuals and society and consequently the relationship between the individual and itself (Luckmann 2007: 223).

In such a society, the economy, politics, legislation and knowledge separate themselves from the superordinate value system and determine the instrumental-rational objective meaning of schemes of action for the individual without religious underpinning in those areas for which they are responsible (see Berger and Luckmann 1995: 25; Knoblauch et al. 2002: 26).

Pluralism and the crisis of meaning

Berger and Luckmann recognize modern pluralism – as an outcome of modernism – as the most important factor in the creation of crises of meaning. They enumerate some structural causes of this fact such as population growth, migration and urbanization; industrialization; the media of mass communication, both printed material and the newest electronic media, which display a plurality of ways of life and thinking (Berger and Luckmann 1995: 37–38). It should be noted that modern pluralism and its result – crisis of meaning – becomes a universal phenomenon through globalization.

Berger and Luckmann deduce 'relativization of systems of values', a 'general uncertainty' and 'different schemes of interpretation' from modern pluralization. In fact, modern pluralism in Berger's and Luckmann's view destabilizes 'common-sense knowledge.' It calls the world, society and personal identity into question. There is no longer only one, true and unquestionable interpretation, but multiple interpretations with different perspectives which raise doubt for individuals about the manner of their lives. In this process, "the age-old function of religion – to provide ultimate certainty amid the exigencies of the human condition – has been severely shaken" (Berger et al. 1973: 166); the alternatives provided by pluralism force people to think in a way that undermines the foundation of all versions of a good old world and assumptions of unquestioned existence.

Accordingly, religion becomes one option from many possible value systems and world views which could be chosen by an individual. As Berger points out, "we choose God instead of God choosing us" (Berger 1980, cited in Bruce 1999: 128) Modernization and pluralism not only fundamentally changed the range of pre-given, unquestioned, taken-for-granted assumptions and existence determined by fate to a long series of possible choices by individuals. They also undermined the traditional source of meaning and all taken-for-granted verities. However, Berger emphasizes that "pluralism affects the how of religious belief, but not necessarily the what" (Berger 2001: 194). It means, as Linda Woodhead explains, "it is still possible to hold religious beliefs even though they have ceased to be taken for granted but it is impossible to hold them in the same way (as in the past)" (Woodhead 2001: 2). She claims that being religious in most modern societies is manifested in new ways even though these new forms of religiosity sometimes

appear similar to the old ways. As a result of this tension, religion tends to change; for example, the attempts of modern theology to cope with modern times through liberal-religious strategies (Dorrien 2001: 33). In pre-modern societies, people who ascribed to a specific religion were required to obey teachings that were absolute, leaving no room for interpretation. Today however, there are 'non-traditional' interpretations of religion which allow individuals to exercise autonomy over their lives. These interpretations show a shift that reflects an understanding of religion as something that comes from God to something that is a result of an internal process of the self; from the after-life to this life. Consequently tradition and religion becomes a service to the individual and self, rather than something that the self and individual must serve or adjust to (ibid.: 65–66).

Therefore, religion must pay attention to 'the wishes of their members' (Berger and Luckmann 1995: 46) as well as to new globalized values and new concepts such as individual rights, and gender equality, which are considered as cosmopolitan norms of justice. Woodhead describes these as non-negotiable values of 'human life' which are mediated and globalized through cultural exchanges such as film, fiction and popular music, which spread the uniquely modern universalism of humanitarian ethics and legislation (Woodhead and Heelas 2001: 51).

Berger states that changes in lifestyle and in political, social, economic and cultural realities of modern societies resulting from modernization do not necessarily lead to secularization – except in some parts of the world. Religion could be still understood as referring to a particular aspect of human existence, or to a supernatural meaning of life, offering a value system for the human being in a modern epoch (Knoblauch et al. 2002: 139). However it should be noted that if religion does not consider an individual's wishes, modern rationality, and universal norms of justice – in other words if it does not adopt a new form that is compatible with modern society – the individual who wants to remain religious would find new ways to maintain their religion and perhaps define for themselves a religion with emphasis on particular features. For instance, despite the conservative viewpoint of the Catholic Church about using contraception, in the United States 90% of Catholics do use contraception and 82% think it is morally permissible (Yan 2013).

Religion and rationality

Religion in modern times cannot be against rationality, since rationality has always maintained a crucial role in human conduct. Luckmann argues, taking Max Weber's perspective into account, that the contribution of religion in the historical process of the rationalization of human life should be noted as well. Berger even recognized Jewish and Christian roots in the rationality of the West (in Bruce 1999: 13). Weber also, as Luckmann notes, defined a paradoxical function for religion that, as a product of the irrational dimension of human existence, initiates and reinforces the process of rationalization. Religion provides

a "socially stabilized interpretation of reality," and systematized "solutions of everyday problems and critical situations in life." It offers a meaningful interpretation of the world for the individual "by providing a stable framework of orientation for the unstructured, 'irrational' subjectivities of individual existence" (Luckmann 1983: 144). Considering Islam, some define Islamic laws or Islamic jurisprudence (*fiqh*) as a set of rules of worship (such as prayer and fasting), and as rules of transaction (like marriage, divorce and sales) as well as political orders (including punishment and retribution) that have always claimed to be rational and scientific in the history of Islam. These rules have followed certain objectives in a rational context in the Islamic tradition (Mojtahed Shabestari 2006: 163–165).

I use Berger's and Luckmann's theory in my research, since they show how individual agents and religion have a dialectical relationship and how this dialectical relationship can be disrupted and a crisis of meaning emerges, in a way that religion becomes unable to offer a value and meaning system to satisfy the human need for meaning and spirituality.

This description of the role of religion in sociology provides an understanding to further analyze theories that are particularly relevant to this research.

2.3 Islam and Structuration Theory: Between Individual Agency and Global Justice

The dialectical relationship between religion and individual agents can be further explored through the concept of *duality of structure* in the structuration theory of Anthony Giddens. He created a theory that investigated "the nature of human action, social institutions and interrelations between action and institutions" (Giddens 1991b: 201) and "the relationship between the individual and social forces as a part of the constitution of social order" (Giddens 1984: 2). One of the main premises of Structuration Theory is the 'duality of structure' concept, which offers a conceptual scheme for understanding how actors are both creators of social systems and are themselves created by social systems (Giddens 1991b: 204). In other words, "people make society and, at the same time, they are constrained by it" (Furseth and Repstad 2006: 66). Cohen (1988) stated how the 'duality of structure' "provides a basis for reconciliation of action and structure" (p. 297).

Defining structure

Giddens defines 'structure' as "rules and resources, recursively implicated in the reproduction of social systems. Structure exists only as memory traces, the organic basis of human knowledgeability, and as instantiated in action" (Giddens 1984: 377).

According to Turner, rules are 'generalizable procedures' and 'methodologies,' which provide 'formulas' for the action of agents in a 'social system' or specific empirical contexts of interactions. Rules are generally used in conversations, interaction rituals, and daily routines. Rules contain 'rights and obligations' that are the bases for 'sanctions' and provide 'interpretive schemes' and 'stocks of knowledge' that are necessary for effective communication (Turner 1986: 972). Resources are structured properties of social systems, drawn upon and reproduced by knowledgeable agents in the course of interaction (Giddens 1984: 15). Furthermore, as Turner explains, resources are "the 'material equipment' and 'organizational capacities' of actors to get things done" (Turner 1986: 972). They are means to mobilize power. In fact, possessing material (allocative)[6] and organizational (authoritative)[7] facilities leads to power.

Based on Giddens' definition of structure, religion can be considered as an element of structure, such that "religious cosmologies provide moral and practical interpretations of personal and social life, as well as of the natural world, which represent an environment of security for the believer" (Giddens 1991c: 103). This definition also provided methodologies and formulas for actions in a social system; defining rights, obligations and sanctions; as well as providing a framework for communication.

On the other hand, religion could be also a resource for generating power based on Giddens' definition. This is especially true for Islam, since Islam is a law-oriented religion. As Arafa (2012) explains, religion "sets the framework for permissible economic, social, and political systems" (p. 5), which can be considered as resources for mobilizing power. Al-Qaradawy (1995) further explained how "Islamic law contains provisions which organize the relation between the rulers and ruled in terms of rights, obligations and duties." He also described the comprehensiveness of Islamic law, how "Islamic law encompasses the individual, the family, and the society" (p.112). Islam prescribes a special behavioral pattern for Muslims as individuals. For example, worship, personal morality, family relations (marriage, divorce, etc), financial matters, civil procedures (trading, lending), criminal or penal law and its related punishments (ibid.), including a wide range of those attributed to 'law' in the modern Western context are regulated in Islamic law (Haddad and Stowasser 2004: 4).

However, Islam cannot be thought of as a monolithic, homogenous block, as there are different interpretations of the religion, each having diverse views on the legitimacy and applicability of all Islamic law as a framework for economic,

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[6] Giddens' definition of 'allocative resources' in his Glossary of Terminology of Structuration Theory: "Material resources involved in the generation of power, including the natural environment and physical artifacts; allocative resources derive from human dominion over nature" (Giddens 1984: 373).

[7] Giddens' definition of 'authoritative resources' in his Glossary of Terminology of Structuration Theory: "Non-material resources involved in the generation of power, deriving from the capability of harnessing the activities of human beings; authoritative resources result from the dominion of some actors over others" (ibid.).

social and political systems in modern society. Based on Giddens' definitions, Islam as a religion – in all its possible interpretations – can be considered as an element of 'structural properties.'[8]

Modalities of structuration

In order to further explain the 'duality of structure' concept, Giddens developed the 'modalities of structuration,' recognizing three dimensions; signification, legitimation, and domination. He explains how "actors draw upon the modalities of structuration in the reproduction of systems of interaction, by the same token reconstituting their structural properties" (Giddens 1984: 28).

Signification is when individual agents employ a communication of meaning through interactions and consequently interpretative schemes. These schemes of interaction, as Cloke et al. (1991) explains, "are capable of identification and analysis at the level of structure as semantic rules" (Cloke et al. 1991: 103). Giddens identifies legitimation as how individual agents, through interactions, apply sanctions on their behavior. Based on this, "social norms can be identified and analyzed at the level of structure as moral rules" (ibid.). The third 'modality of structuration,' domination, is defined as when individual agents use power through interactions that provide facilities. "These enabling facilities can be identified and analyzed at the level of structure as resources that comprise the structure of domination" (ibid.).

All three dimensions in Giddens' model can be found in the prevailing interpretation of Islam, in which 'the paradigm of duty/obligation' dominates. This interpretation follows that only God has absolute power, the structure of domination belongs to God, and the power relations between human beings are determined according to the divine rules. Moral rules and legitimation also are defined in accordance with God's will. According to this paradigm, "a Muslim's main concern is (and must be) to know what he/she is obligated to do in order to avoid God's wrath and punishment, and enjoy worldly happiness and eternal salvation" (Naraghi 2007). The paradigm also contains certain signification based on the 'language of duty/obligation' rather than the 'language of rights' that considers the human being primarily as a duty-bearer rather than a right-holder. Thus, individual agents by interacting employ interpretative schemes in accordance with his/her duty towards God.

[8] Giddens' definition of 'structural properties' in his Glossary of Terminology of Structuration Theory: Structurated features of social systems, especially institutionalized features, stretching across time and space" (Giddens 1984: 377).

Religion and individual agents

Another key component of Structuration Theory is the idea of 'reflexive monitoring,' which is the ability that permits individuals to account for, explain and rationalize their actions, either to themselves or to others. The theory also emphasizes that rules and resources are produced and reproduced by agents. Giddens characterizes human agents as knowledgeable and capable subjects who have the ability to reason and act purposively, but who also have the ability to act in contrast to these tendencies (Cloke et al. 1991: 97–99). Individual agents are the primary subjects in this idea, which brings up particular questions about the role of individuals when religion is one of the fundamental structures in a society. How influential are individual agents in the reproduction of religious law? How is the relationship between actors and religion defined in different religious thought streams?

These questions must be examined through a concept Giddens termed as 'time-space distinction' which refers to the complex relations between local actors and interactions across distances (Giddens 1991c: 64). He distinguishes two forms of integration: 'Social integration,' which refers to face interactions, where both actors are present at the same time and in the same place. 'System integration' is about "reciprocal relations between those who are physically absent" (Cohen 1989: 42).

In Abrahamic religions, including Islam, one important factor in the integration of religious followers in different times and spaces is the belief in the divinity of religion and its claim to be a statement of revelation. This belief makes religion metaphysical, supernatural and totally remote from human knowledge. The question that arises here is whether or not the human agent is competent to influence or even change religious law over time and space. If the individual agent is able to intervene in divine law, the next question arises as to whether they are consequently undermining the divinity of religion. In a broader sense, can religious laws change over time and space in accordance to societal changes without losing its divinity? The arguments concerning this idea for different streams of Islamic thought are discussed in the second part of this book.

Globalization and cosmopolitan norms of justice

One of the most important factors in reflexively monitoring interactions, and the examining and reforming of social practices is access to information about the world and individual agents within it (Furseth and Repstad 2006: 67). In the modern world, rapid advancement of information and communication technologies creates a sense of interconnectedness; people living in 'one world' which Giddens recognizes as one dimension of globalization. According to Giddens, globalization itself is one of the fundamental consequences of modernity (Giddens 1991a: 75, 175). Globalization is characterized by increasing economic,

political, social and ecological interdependence, and increasing global communication and mobility, as well as the increasing influence of new actors – especially supranational organizations, transnational enterprises and Civil Society Organizations (CSOs) or NGOs (Lenz and Schwenken 2002: 157). Mechanized technologies of communication therefore have led to broader understanding of events in a social system by individual agents.

Social systems, as Giddens points out, are situated within time and space (Cloke et al. 1991: 110). He uses the term 'time-space distanciation' in referring to complex relations between local involvement (circumstances of co-presence) and interaction across distance (the connections of presence and absence) (Giddens 1991a: 64). In Giddens' opinion, "the level of time-space distanciation in the modern era is much higher than in any previous period, and the relations between local and distant social forms and events become correspondingly stretched" (ibid.).

Giddens recognizes this 'stretching' process as the basis for globalization, "in so far as the modes of connection between different social contexts or regions become networked across the earth's surface as a whole." Consequently, worldwide social relations intensified by globalization and distant localities are linked together (ibid.). Hence modern concepts such as the rights of the individual or women's/human rights as bases for norms of justice that cannot be restricted to special regions, but are converted into cosmopolitan norms and concepts and become universal. However these norms were born in the West and have their origins in Western philosophy and historical social political contexts.

The role of individual agency in constructing the identity

Modernization and shifts in norms have changed the conception of human agency and people's ability to construct their own self-identity. Identity, according to Charles Taylor (1994), refers to "a person's understanding of who they are, of their fundamental characteristics as a human being" (Taylor 1994: 25). The process of developing identity does not take place in isolation, but is generated through dialogue with others; it is a dialogical relation with others, and "unshaped by a predefined social script" (ibid.: 34). Giddens also emphasizes the role of individuals in building identity in modern society and says that identity is not something given, but is created and chosen by the individual (Furseth and Repstad 2006: 67). Therefore, new concepts of individual rights on the one hand, and the 'pluralisation of contexts of action' as consequences of globalization and modernity on the other, are increasingly important in the constitution of identity and daily activity (Giddens 1991a: 5). This is because individuals have the opportunity to make choices between alternative worldviews, including a religious worldview that is "not necessarily congruent with collective religious sentiments" (Eickelman 2002: 120). The concept of human agency and identity was no lon-

ger confined to the language of duty/obligation and no longer predetermined by some transcendental vision and authority. There is no doubt, however, about the importance of religion as one of the crucial factors in creating identity which binds people over time and space and leads to system and social integration. Nevertheless, religion becomes one of the options for construction of human agency and identity alongside other options which can be chosen by the individual.

In fact, women's freedom and gender equality is one of outcomes of the redefining of human agency and identity. It carries a conception of autonomous human agency which is able to participate in forming and changing the social and political order. Even in social systems where structures continue to resist change the individual agent becomes autonomous through the tremendous impact of globalization and tries to find a way to change the social and political order. Lenz and Schwenken (2002) refer to the capacity of individual agents for developing international orientation and communication which can support them in entering global games. International orientation means "knowledge of global economic, political and cultural structures and institutions, and of global or transnational communication" (Lenz and Schwenken 2002: 159). In fact, Globalization, through modern communication technologies, has facilitated the diffusion of the new concepts resulting from modernity, such as individual rights and gender equality, as part of cosmopolitan norms of justice, allowing a broader perspective of human freedom as well as providing a wider range of choices that in turn, gives human agents opportunities to take charge of themselves.

Religion and civil rights

Another point of Giddens' theory of structuration, which is relevant in the study of the different perspectives of Islamic thought to gender equality and women's rights in modern society, is the third dimension of modality of structuration which deals with using power at the level of interaction, and domination at the level of structure.

Power within a social system continues over time and space and implicates the regularized relation of autonomy and dependencies between actors or collectivities in contexts of social interaction. Giddens calls this 'the dialectic of control' in social systems. This idea holds that "all forms of dependence offer some resources whereby those who are subordinate can influence the activities of their superiors" (Giddens 1984: 16). This implies that subordinate groups can exercise some control over a superordinate one and can influence the actions of others. Allocative and authoritative resources as the 'storage capacity' of different societies across time and space provide different forms of power in different types of society (see Urry 1991: 166). In modern societies the resources leading to power for individual agents can be defined as civil rights, the abuse of which could lead to totalitarianism in the arena of political power. Only public discourse and political participation as integral to civil rights can prevent total-

itarianism (Jary 1991: 139). This idea is particularly important for the study of different perspectives on gender equality and women's rights in modern society of the main currents of Islamic thought.

These last two points – the dialectic of control and the power of individuals through their civil rights to preventing totalitarianism – are expressed in theories of justice which are based on theories of recognition. Because of the importance of recognition theory for the definition of justice and other theories related to this research, the proceeding section introduces this theory through its contemporary advocators, including Axel Honneth and Nancy Fraser.

2.4 Religion and Recognition

'Recognition' refers to the acknowledgment of another being in his or her status, achievements or rights. In the philosophical and political definition of recognition it is emphasized that it is not only to respect and value another person, but is also the basis of understanding ourselves.

There are two models of recognition (McQueen n.d.): first, the 'response-model of recognition' which acknowledges the pre-existing features of person. As Markell (2000) explains, it "resonates with the ordinary use of the word to refer to the re-*cognition* of something once known but lately hidden, forgotten, or absent" (p. 496). Through recognition people are brought into the center of discourse. Therefore recognition "asserts that people have a right not just to be respected in their humanity but to be acknowledged publicly as what they already really are" (Appiah, 1994:149, cited in McQueen n.d.). Second, the 'general-model of recognition' in which the person must act in a certain way in order to get recognition, is not about the already-existing thing. For example, a chairperson recognizing someone as a speaker in a meeting is not because of a status that already exists, but instead is a production of the chairperson's institutionally authorized act of recognition (Markell 2000: 496).

Justice in Nancy Fraser's view

Nancy Fraser identifies recognition and redistribution as two important dimensions in her model of justice and injustice. The recognition paradigm deals with cultural justice, while the distribution paradigm with economic justice. She also recently added another dimension – political representation – to this model. Therefore, from her point of view, justice must be understood as a complex concept with three vital dimensions that are irreducible to each other – political representation, economic redistribution and legal-cultural recognition.

Fraser argues that political injustice or misrepresentation result from people's inability to access their civil rights and to equally participate in public deliberation and democratic decision making processes. Therefore, justice means that all citizens must have equal access to resources (Fraser 2010: 13). From a redistribution perspective, for social justice to be realized, there must be a more equitable distribution of resources and wealth. In this context, socio-economic structures are considered to be root causes of injustice. Examples include exploitation, economic marginalization, and deprivation. Legal-cultural recognition is another type of social-justice, which Fraser explains as being rooted in cultural and social patterns of representation, interpretation, and communication. It is concerned with the way identities are positively or negatively valued. Examples of injustice in this perspective include cultural domination, non-recognition of the perspective of ethnic, racial, and sexual minorities, as well as of gender difference. The remedy for injustice in this perspective is cultural or symbolic change. In Fraser's view, at the heart of this recognition claim is a vision of a "difference-friendly world, where assimilation to majority or dominant cultural norms is no longer the price of equal respect" (Fraser 2003: 19).

The lack of a normative principle for participatory parity in these three dimensions leads to injustice. Justice "requires social arrangements that permit all to participate as peers in social life" (Fraser 2010:60). Therefore, to eliminate injustice requires destroying institutionalized obstacles, which prevent certain people from participating on an equal par with others as full partners in social interactions. Such obstacles in economic structures can deny people the resources needed for interacting with others as peers and lead to 'distributive injustice,' or the 'mal-distribution' of resources. In terms of the cultural dimension, people might suffer from 'status inequality or misrecognition,' preventing them "from interacting on terms of parity by institutionalized hierarchies of cultural value" (ibid.), denying their right to be "reciprocally recognized in terms of their group identity, individual achievement, autonomous personhood, cultural distinctiveness, common humanity, or the requisite standing as partner in social interaction" (ibid.: 32). In political representation, 'ordinary-political injustice' arises "within bounded political communities, when skewed decision rules compromise the political voice of some who are already counted as members, impairing their ability to participate as peers in social interaction" (ibid.: 6).

Fraser further expounds her analysis by linking these social justice claims to gender. On the relationship between gender and the claim on economic distribution, Fraser identifies the fundamental division between paid 'productive' labor and unpaid 'reproductive' and domestic labor. This division places women as mainly responsible for domestic labor. The second division occurs within paid labor between higher-paid professional occupations dominated by men and lower-paid positions dominated by women, such as domestic service occupations. In Fraser's opinion these lead to an economic structure with gender-specific forms of distributive injustice (Fraser 2003: 20).

In terms of the relationship between gender and the recognition paradigm, Fraser recognizes andro-centrism as a major feature of gender injustice. She defines it as "an institutional pattern of cultural value that privileges traits associated with masculinity, while devaluing everything coded as 'feminine,' paradigmatically – but not only – women" (ibid.) Such institutionalized androcentric value patterns permeate into popular culture, social and everyday interactions, as well as into many areas of law (including family law and criminal law). This results in gender-specific forms of status subordination "including sexual assault and domestic violence; trivializing, harassment and disparagement in everyday life; exclusion or marginalization in the public sphere and denial of the full rights and equal protections of citizenship" (ibid.: 21).

Fraser suggests two remedies for injustice: affirmation and transformation. 'Affirmation' aims to change the unjust appearances of social arrangements without disturbing the underlying framework that generates them, while the second remedy –'transformation' – aims at restricting the framework of the generation of injustice which derives from socio-cultural structures. For example, the generative framework of inequality situated in language and social arrangements reproduce hierarchical binary oppositions like 'heterosexual/homosexual', 'white/black' or 'man/woman.' According to Fraser's suggestions, such binary logic must be deconstructed, rather than just re-evaluating heterosexual, female or black identities (McQueen n.d.). However, she recognizes the difficulty of deconstructing these identities in practice. For instance, "calls for deconstructing binary are far removed from the immediate concerns of most subjects of misrecognition, who are more disposed to seek self-respect by affirming a depreciated identity than by espousing the blurring of status distinctions" (Fraser 2003: 77).

Fraser also emphasized the importance of who should count as the subject of justice. Today's globalized world does not restrict the subject of justice to citizens residing within territorial states or boundaries, nor should it be understood as "a domestic relation among fellow citizens" (Fraser 2009: 282). Undoubtedly, the impact of social processes on individuals' lives oversteps territorial borders. In this process of communicating and network organizing, global mass media and cyber technology have considerable roles. This is particularly important for influencing supranational and international organizations, both governmental and nongovernmental, as well as increasing public awareness of political issues (ibid.: 13–14). These issues include the many forms of violence against women (Siim 2010: 79), inequality in work and education, ecology as a gender issue and the equal participation of women in politics and decision making (Lenz and Schwenken 2002: 157), and ultimately in shaping transnational public opinion including public opinion about the concept of justice in modern times and its relation to gender.

Axel Honneth and the concept of reognition and justice

Axel Honneth, like Nancy Fraser, claims that at the core of all ideas about justice in modern societies, there is an egalitarian feature which emphasizes the supreme importance of equal rights for all members of society and ultimately affording all members the same autonomy (Honneth 2004: 356). Similar to Fraser, Honneth's theory of justice is rooted in the concept of recognition. While Fraser emphasizes 'participatory equality' in the three dimensions of economic, cultural, and political representation, Honneth believes that issues of distributive justice can be better understood through issues of recognition itself, and that recognition is essential to self-realization.

Recognition and self-realization

Honneth sees recognition as essential to self-realization. To achieve self-realization, Honneth identifies three 'patterns of recognition' including love, rights, and solidarity. The concept of 'love' refers to needs and emotions which can receive 'confirmation' in the form of emotional approval and encouragement from the concrete physical existence of other persons in our primary social relationships, such as family, close friends and lovers. This type of emotional recognition leads to self-confidence. The second concept, 'rights,' refers to what Mead calls a process of assuming the perspectives of a 'generalized Other,' (in da Silva 2007) in which the individual learns to see him/herself from the perspective of his/her interaction partner in order to interact as two persons with equal rights. This type of recognition deals with moral responsibilities to others as legal entities and leads to fundamental self-respect. Finally, the concept 'solidarity' relates to the recognition of abilities acquired in the course of lives. It helps individuals become individualized and develop self-esteem. Therefore, recognition of this type is based on a person's special individual characteristics formed by specific biographies. This is different from the relations of love and rights, which express universal features of human subjects. These three patterns of recognition provide human beings with the feeling of 'dignity' or integrity (Honneth 1992: 193–195).

Justice and individual self-determination

Honneth's theory is founded on conditions of actualization of freedom in different institutions as well as various practices and principles. He extracts a criterion for social justice from the normative reconstruction of the social institutions of liberal democracy. His criterion is most applicable for modern societies that have social, cultural, economic, political, legal and moral principles based on individual freedom. With the rise in the prevalence of the idea of individual freedom, perspectives on the rules of social coexistence and social justice have evolved. Accordingly, individual freedom, individual autonomy and self-determination have become the prerequisite for social justice in modern society.

Consequently, according to Honneth, the normative foundation of justice in modern societies is not the will of the community, nor the natural order, but individual freedom and autonomy. Therefore, justice and individual self-determination are two concepts that must be understood alongside each other. A relationship between these ideas, he argues, must be freed from a theological framework in order to define the individual subject as the author of all social laws and norms (Honneth 2011: 37–40). A theocentric perspective, in contrast, is based on an obligation/duty paradigm in which no individual freedom is admissible. In a theological framework, the individual is recognized as a duty-bearer rather than a rights-holder with individual autonomy. The question of individual autonomy is a new concept and an outcome of modernity and globalization, which cannot be addressed in the classical texts of various doctrines of Islam (see Arkoun 2006: 273). However, there has always been a discourse on the right of God and the right of the person in Islamic thought, with priority and primacy of the former over the latter. All aspects of human life, including respect for human rights, are a basic condition for respecting the rights of God and his autonomy (Arkoun 1994: 108). Therefore, defining justice based on individual freedom and autonomy needs a new paradigm, recognizing the individual as right-bearer rather than duty-holder to God.

The various currents of Islamic thought have discussed modern definitions of justice based on the idea that an individual is a right-bearer. Some schools of thought are becoming centered on individual freedom as a value related to modernity. Therefore, Honneth's theory as a criterion for justice is useful for studying the concept of justice in the main currents of Islamic thought.

Honneth provided three different models of individual freedom to explain the concept of justice in modernity: negative, reflexive and social. Honneth posits negative freedom as an essential principle of modernity which ensures the autonomy of the individual person. This implies that an individual has a right to act without external restriction and is independent of any compulsion to examine his/her motivation of action, as long as s/he does not overstep the equivalent right of his/her fellow citizens (Honneth 2011: 58). He also explains how the institution of legal freedom is an action system of negative freedom, which implies subjective rights and individual freedom, including participatory rights as the foundation of democratic communication and decision-making. However, this idea is limited to private autonomy, which should be protected by law, and is not enough to develop a society, for which communal practices and cooperation in civil society are necessary as well (Rendtorff 2012).

Reflexive freedom addresses self-relation, as well as self-determination of the human subject. It shows how the individual is free to choose and that his/her actions are guided only by his/her own intentions (Honneth 2011: 58–59). Therefore, the individual regulates his or her actions rationally and has the freedom or the right "to form his own judgment about moral norms" (Mayerhofer 2012). Based on this idea of reflexive freedom, Honneth also defines moral freedom as a regulation of desire and a sort of rationalization of life in nature. Respect and

recognition of human dignity in social life are essential dimensions of this concept of morality (ibid.). Every human being, regardless of status and cultural differences, should enjoy definite 'dignity.' However, this idea contrasts with the traditional image of dignity that is based on a hierarchical pattern which offers an image of 'equality with God' (*Ebenbürtigkeit Gottes*). Therefore, the dignity of the human being in modern times is no longer based on the premise that human beings are created in God's image and likeness, but that the human beings themselves are objects of dignity, which entails being considered by other human beings as a moral and independent person who is capable of rationally justifying his actions (Honneth 2011: 81). Dignity is linked to the moral self-definition and self-creation of individuals with moral autonomy, which implies taking responsibility for their own life and humanity (Rendtorff 2012). This subject is of crucial importance to understand the perspectives of the main currents of Islamic thought, especially when considering if they still define the dignity of the human being as an image of God.

Honneth's third area of individual freedom emphasizes that the idea of self-determination and self-actualization – elements of reflexive freedom – are socially available and require "institutional conditions to enable all individuals to reap the fruit of their respective freedoms" (Honneth 2009: 174). He explains that such institutional conditions refer to the social model of freedom, which brings additional social conditions into play. Therefore, "the idea of reflexive freedom cannot unfold without implicating the institutional forms that will make possible its realization" (ibid.: 175). In social freedom, social relations are considered as an embodiment of self-realization. In other words, recognizing others, which is only possible in social institutions, is a constitutive element of the freedom of individuals, such that "the subjects meet others with whom they can have relations of reciprocal recognition within their institutional practices, and there they can find the conditions of their own self-realization" (Okochi 2012: 14).

Through his discussions of reflexive freedom, Honneth expanded the notion of freedom by including self-relational subjectivity. Similarly, his discussion of social freedom includes objectivity and social institutions. In his discussion, justice means that all individuals have the opportunity to participate in institutions of recognition. In such a system of justice, social freedom, alongside negative and reflexive freedom, is required to achieve meaning in individual lives as well as mutual recognition in the social arena. Honneth also investigated how the value of individual freedom, as a principle of justice, is generated in specific social areas: personal relationships (including friends, intimate or love and family relations), market relations, and the public sphere of politics. Of particular interest to this study is his discussion of the family as an important space for social freedom.

Family as a place for individual self-realization

Accoridng to Honneth, the modern family has substantially changed in the last sixty years in terms of the structural relationships between family members, which is now partially based on inter-subjectivity and equality (Honneth 2011: 284). In the image of modern family that Honneth offers, traditional role-specific tasks such as father, mother and child are organized by patriarchy and socially constructed norms that have been transforming into a cooperative social relationship based on love, equality and partnership rather than authority and paternalism (ibid.: 301). Members of such families are no longer conditioned to fulfill role-specific tasks; rather they care and reciprocally help each other, particularly in the situations of special existential pressures. In this respect, members of the modern family recognize each other as human subjects who form a community for solidarity (Solidargemeinschaft). The family therefore becomes a place for individual self-realization, for preparing the members to transit into the public life in society. Families become support systems, nurturing each member into the person they each want to become, respecting their own individuality (ibid.: 315).

This is one perspective of the modern family that, in Honneth's point of view, is a requisite for justice. Modern families exhibit equality and partnership instead of paternalism and authority, an observation that shall be debated from the perspectives of the different streams of Islamic thought in next chapter. Such struggles for recognition and freedom become a cosmopolitan ideal, which expects that various institutions and principles be no longer confined to bounded political communities like the nation-state, but rather reflect global perspectives in modern globalized conditions.

Seyla Benhabib and the concept of cosmopolitan norms of justice

Various international instruments addressing human rights, such as the Universal Declaration of Human Rights (UDHR), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the UN Declaration on Sexual Orientation and Gender Identity of 2008, can be considered as a practical aspect of the realization of recognition theory at the international level. UDHR guarantees people's political representation, economic redistribution and legal-cultural recognition, all of which Fraser considers as prerequisites for justice. For instance, Article 21 of the UDHR guarantees the right of an individual to "take part in the government of his country, directly or through freely chosen representatives." It also guarantees that the will of the people shall be the basis of the authority of government. Furthermore, such conventions and declarations are international recognitions of the legal rights of individuals (Ignatieff 2000: 288–289), which are, as Honneth posits, prerequisites for individual freedom and autonomy and ultimately required in order to achieve social justice.

Seyla Benhabib in her work Another Cosmopolitanism (2006) recognizes the UN Declaration of Human Rights of 1948 as a key instrument for the protection of human rights, which is the beginning of a phase in the evolution of a global civil society (Benhabib 2006: 16). She describes this phase as "a transition from international to cosmopolitan norms of justice" (ibid.). While norms of 'international justice' deal with agreements among states and regulate the relations between states, 'cosmopolitan norms of justice' believes individuals have certain rights and must "be recognized as moral beings worthy of equal concern and who are equally entitled to be protected as legal personalities their own polity, as well as in the world community" (Benhabib 2011b: 62). Therefore, all individuals are considered as "right-bearing not only in virtue of their citizenship within states but in virtue of their humanity as well" (Benhabib 2011a: 14).

Benhabib explained cosmopolitanism based on Kantian tradition, saying that it must be understood "as the emergence of norms that ought to govern relations among individuals in a global civil society" (Benhabib 2006: 20). She posits that these norms are neither merely moral nor legal, but in fact frame the morality of the law in a domestic, and even more so, in a global context. She emphasized that these norms "signal the eventual legalization and juridification of the rights claims of human beings everywhere, regardless of their membership in bounded communities" (ibid.).

For a better understanding of cosmopolitan norms of justice, Benhabib uses Hannah Arendt's term *the right to have rights*. While Arendt uses this in reference to political rights, which she defined as the 'right to membership in a political community,' Benhabib proposes a 'non-state-centered conception' of this term, which refers to "the claim of each human person to be recognized and to be protected as a legal personality by the world community" (Benhabib 2011a: 4).

The 'non-state-centered' concept raises the question of 'who' accounts for the justice and human rights mentioned by Fraser. A humanist approach appeals to the moral criteria of personhood and to address a "common possession of defining features of humanity" (Fraser 2009: 290). However, the humanist principle is more abstract and "not genuinely reflexive" (ibid.). And as Fraser argues, such a one-size-fits-all frame of global humanity takes no account of actual or historical social relations and offers the same frames or scales of justice for varying issues (ibid.).

Benhabib also described the importance of forming commonalities to embrace diversity, and to overcome conflict, divide and struggle in universalism. She emphasized that if human rights are considered as universal, it cannot ignore diversities. She resolved this by suggesting a "generalized as well as concrete other" (Benhabib 2011a: 6).' By "generalized other" she means that every individual is entitled to the same rights and duties as other human beings, emphasizing humanity and moral dignity. On the other hand, the 'concrete other' refers to individuality constituted by a concrete history within a collective identity that characterizes human individuality (Benhabib 2011a: 6–7). Therefore, human rights and justice should consider differences and individuality, as well

as the common humanity among human beings. The most significant point is how rights related to differences and individuality should not violate the rights of common humanity.

Benhabib further supplemented the humanistic approach by referring to the legal form of human rights. In her opinion, universalism has a moral as well as legal meaning (Benhabib 2002: 27). She argues that human rights are "moral principles that need contextualization and specification in the form of legal norms" (Benhabib 2011a: 14). In fact, the role of the juridical, constitutional, as well as common law tradition of each human society cannot be ignored in the legal articulation of human rights. Since constitutional and common law might be based on cultural patterns and value systems in some human societies, contextualization faces the risk of cultural relativism, as well as what Benhabib calls 'strong contextualism' (Benhabib 2002: 39). The main premise of cultural relativism is recognizing distinct but equal values and cultural patterns for every human society. Cultural relativism, as Benhabib criticizes, offers an interpretation of cultures as "hermetic, sealed wholes that are isolated from one another as well as being internally self-consistent" (Benhabib 2001: 250). Furthermore, it "privileges the homogeneity of cultures and identifies one axis of self-definition and identification, an ethnic one, as being philosophically privileged and relevant" (ibid.: 247). Therefore it "minimizes the significance of cross-cultural dialogue" (ibid.: 244). In contrast to this perspective, Benhabib points out, that "cultures are systems of meaning, value, and interpretation which must also be reproduced over time by individuals under the constraints of a material way of life" (ibid.). Modernity and globalization, as well as pluralism, are of crucial importance in this process of shaping cultural worldviews.

Benhabib also recognized the right of self-government for individuals as a legitimizing factor for the existence of a varying range of interpretations and implementation of human rights in different societies. This means the contextualization and interpretation of human rights is possible "only if the people are viewed not merely as subject to the law but also as authors of the law. They can participate in opinion formation which is to regulate their lives in society" (Benhabib 2011a: 14), and as citizens or residents they can participate in opinion formation concerning the laws related to their common lives. Hence, the right to have rights, as Benhabib explains, not only means a right of membership, but implies "the right to action and to opinion in the public sphere of a polity, the laws of which govern one's existence" (ibid.: 15). Therefore, enjoyment of some universal human rights is a prerequisite for contextualization.

In some societies, women are not only deprived of human rights, but their lack of rights is understood to be an aspect of a particular culture and cultural 'ethical life-world'. Benhabib emphasized that women's rights must be considered "in the light of a universal moral language, which is context independent" (Benhabib 2002: 40). Women's rights must be supported regardless of religion or culture. Otherwise, contextualization and interpretation could lead to violation of human rights, women's rights, human dignity, and could ultimately lead

to injustice. Apart from being considered as a universal moral language, women's rights need to be enforced in different societies, understood as part of the entire human rights framework, and they must have international support. One example is the recent declaration from the 57th Session by the United Nations Commission on the Status of Women (March 15th 2013), on ending all forms of violence against women and girls. While non-binding, the outcome document carries enough weight to pressure member states to protect women and girls against violence. As U.N. Secretary-General Ban Ki-moon pointed out, "Violence against women is a heinous human rights violation, a global menace, a public health threat and a moral outrage" (Nichols 2013). He further emphasized that "no matter where she lives, no matter what her culture, no matter what her society, every woman and girl is entitled to live free of fear" (ibid.). By this declaration, states are expected to take responsibility to turn the declaration into reality. However, there were attempts to derail the process by some conservative Muslim countries including Iran, Egypt, Saudi Arabia, Qatar, Libya, Nigeria and Sudan, along with Honduras and the Vatican, who justified their opposition as defense of their cultural and religious life-world.

Human rights are recognized as a public language for solving conflicts in the international arena. On the one hand, human rights can set the appropriate moral standards for evaluation and criticism of constitutional law and social conditions in human societies. On the other, these standards create parameters for the international community to challenge violators of human rights. Here, "NGOs take the function of monitoring in order to push their national governments to implement international regulations. Therefore the implementation is accompanied by monitoring activities like the formulation of shadow reports or media coverage about the lacking implementation" (Lenz and Schwenken 2002: 174). Furthermore, violations may justify international actions meant to ruin the reputation of perpetrating states through "public shaming and blaming" (Lafont 2011: 19).

2.5 Theoretical Approach to Analysing Changing Gender Norms in the Main Currents of Islam

This study aims to discuss modern concepts including women's rights and gender equality in various streams of Islamic thought. For this purpose, this chapter began with a discussion on the sociology of religion and provided a background on efforts to define religion. The definition of religion has changed over the course of time. To gain a definition of religion in modern times as a source of a meaning system for human beings, a definition of secularity – as an outcome of modernity – is required. Similar to the definition of religion, secularity has been defined and analyzed in many various ways in its history, ranging from societal to individual levels, from political to social realms, from the pri-

vatization and marginalization of religion to differentiation of the secular spheres such as economy, state and science. Some speak of the failure of secularization theory, which predicted of decline of religion in both society and individual consciousness in modern society. They argued that modernity emerged in the form of 'multiple modernities' (Eisenstadt 2002) and the great world religions have kept their status through their 'great culture-forming power' (Habermas 2010). Accordingly, all modern societies do not follow one definite path of modernity, which ultimately leads to secularization, but rather they follow their own ways of modernity.

There are others that speak of 'post-secular society' to address the continued existence of religious community in a constantly secularizing environment (Habermas 2006: 1–25). Therefore, a contemporary meaning of a secular or post-secular society refers to a society, as Taylor (2007) describes, where religion is one option among others for the human being. It means religion and belief in God are no longer unchallengeable, but rather the plausibility of structures of modern societies has opened religion to question and debate which prevents naïve knowledge of transcendent values.

In reaction to secularity, in its narrowest meaning as the decline of religion, there have been many efforts that have rejected the privatization of religion and tried to bring it into the mainstream of society. Such efforts, called fundamentalism, have not been confined to Christianity and West, but have manifested all around the world and in all the world's religions. Recently, Islamic fundamentalism has come to be known as one very strong fundamentalist stream aimed at 'religious integrism ', or attempts to roll the secular separation of religion, politics and society back to religious values and norms and to reintegrate religion in all realms of society (Taylor 2004: 375). However, it should be noted that fundamentalism has not been the only reaction of the Islamic world to secularity, but rather there have been reformist efforts to adjust the religion to the modern circumstances of human life, especially those based on the separation of politics and religion.

These concepts are better understood when they are studied from a global perspective alongside their historical and local origins. Similarly, many theories deliberating such phenomena, which have originally been used in the context of the West and Christianity, can be compared and applied from a global perspective for other religions and non-western regions. Accordingly, my research framework applies Peter Berger and Thomas Luckmann's theory to the role of religion in pre-modern and modern society. The essential point in this theory is the dialectical relationship between the human being and society, which incorporates three processes; externalization, objectivation, and internalization. Externalization refers to the process of constructing subjective meanings in consciousness which are then projected externally, while ojectivation is the concomitant process of producing society – the creation of a reality by human physical and mental activity which confronts the human being as an external and independent fact and an objective reality. Ultimately, internalization refers to the process of in-

corporating objectivized reality into the structure of subjective consciousness, which is considered as process of societal influence over human beings.

In this relationship, subjective meaning is constituted in human consciousness and is the origin of all social stocks of knowledge. Tradition, therefore, is the objectification of the subjective meaning preserved in historical reservoirs of meaning and religion fills a crucial place in the objectification of meaning in social reality. Since there is a constant interaction between objectified and subjective meanings, they necessarily should overlap; otherwise it leads to a crisis of meaning. In pre-modern societies where religion was a single resource of value and the interpretation of reality and religious representation were broadly diffused among all institutions, the differentiation between various social functions was so slight that social structures, personal identities and religion overlapped each other. In such societies, as Berger and Luckmann argue, the total stock of meaning stored and managed in social institutions was in conformity with practical life; there were no contradictions between objectified and subjective meanings in the value system, and consequently, no ground for a crisis of meaning.

In modern society, religion is no longer the single source of the value system for all members of society. Since the values and orientations of individuals can be totally different from values supported by the social order, the basic condition for spreading a crisis of meaning is provided in modern societies. Here, religion, which once conducted whole institutions, loses its influence over other realms of the social order because of the differentiation of social structures in specialized institutions. The cause of this crisis, according to Berger and Luckmann, is the modern pluralism that resulted from modernization, which leads to the relativization of value systems and general uncertainty. It brought all indisputable interpretations into question, destabilized common-sense knowledge and challenged all taken-for-granted interpretations of world, society and individual identity. Pluralism provided alternative sources of value systems alongside religion, and expects the individual to choose among them. The differentiation of various realms such as economics, politics and law brings up new issues and needs for human beings, which in the modern epoch religion is not able to either respond to nor to satisfy with its old worldview. Therefore, religion must offer a new value system that aligns with human desires and that recognizes more space for individual autonomy. Furthermore, religion should not expect human beings to function in opposition to human rationality.

The dialectical relationship between individual and society or structure is also elaborated by Anthony Giddens in his Theory of Structuration. Religion, providing rules and resources through its moral and practical interpretations of personal and social life, as well as its obligations and sanctions, defines a framework for interaction that can be considered as an element of structure. The dialectical relation between individual and structure can also be recognized as dialectical relation between individual and religion.

Individual agents adopt a schema of meaning and interpretations for interaction and also acknowledge a system of sanction on their behavior – moral rules.

In this way they legitimize the power of religion as a resource of meaning and interpretative schemes. However, individual agents play an essential role in producing and reproducing rules and resources through the reflexive monitoring of interactions. Human agents are characterized as knowledgeable and capable of using reason in their actions and also those of others. Human agents examine what they receive from structure and religion and underline reasons for them, and concomitantly influence the rules and resources that are considered as the basis of structure and religion. Therefore, while human agents adopt the patterns of interaction offered by structure and religion and thereby legitimate its power, at the same time, they influence and reproduce its rules and resources.

The important point is that if religion, as an element of structure, rejects this dialectical relation and discounts the reflexive monitoring of individual agents, it leads to what that Peter Berger and Thomas Luckmann call a crisis of meaning; since in this condition, the objectified meaning is inconsistent with subjective meaning. Another crucial point is that this dialectical relation between individual and religion has always existed, both in pre-modern and modern society. In pre-modern society, even though there was no differentiation among various realms such as economics, politics, law, and social institutions and they all followed the conductive system offered by religion, this was also allowed by the reflexive monitoring of human agents. The patterns of meaning and interaction suggested by religion were recognized as rational and proper responses to human issues and needs in both personal and social life. In the modern era, where institutions are differentiated from each other, people follow their own rationality void of religion's legitimacy and therefore the dialectical relation between religion and individual becomes controversial. Human agents apply modern rationality to reproduce rules and resources in order to achieve patterns of meaning and interpretations schemes proper to modern circumstances and issues. Religion, challenged by new conditions, must change and modify itself in this dialectical relationship. Thus, if religion closes its doors to the reflexive monitoring of individual agents, a crisis of meaning may occur.

It should be noted that, considering pluralism, as discussed in Berger and Luckmann's theory, religion in the modern epoch is not the single bearer of a value system; rather it is only one option among others. This implies the importance of individual agents' choice. Having individual agency requires a unique identity different from that predefined by the social order. This unique identity is created and chosen by the individual. In fact, the individual plays a crucial role in understanding who they are and their fundamental characteristics as a human being. Identity is not based on an understanding of a human being as obligated to transcendental and divine rights, but rather is founded on an understanding of human beings as rights-bearers who expect recognition of rights by other human beings. Therefore, building identity is a dialogical relation with others and is neither shaped by a predefined social script nor predetermined by transcendental authority.

One factor in the dialectical relation between structure and individual agent is a 'dialectic of control' which regulates autonomy and dependency in this com-

plex. The individual agent requires allocative and authoritative resources to be effective and exercise some control in this relationship. Allocative and authoritative resources provide different forms of power for individual agents in different types of society and in different times. In modern societies, the resources leading to power for individual agents can be defined as civil rights, or in general, individual rights which are actualized in participation in various realms. Defining and recognizing this set of individual rights is essential to create an individual identity and to provide the basis for justice in the modern epoch.

Nancy Fraser categorizes these rights in the three dimensions of economics, politics and culture, and defines injustice as the outcome of the lack of social arrangements for participatory parity in these three dimensions. Eliminating injustice therefore requires destroying institutionalized obstacles that prevent some people from participating on a par with others as full partners in social interactions. Political injustice or misrepresentation results from people's inability to access their civil rights and to participate equally in democratic decision-making. Economic injustice is the outcome of 'maldistribution' of resources and wealth. Injustice in the cultural dimension refers to misrecognition of identity, individual achievement, and autonomous personhood which prevent human beings from interacting on terms of parity because of institutionalized hierarchies of cultural values. These three dimensions can also explain injustice based on gender. For example, a gender-specific form of distributive injustice can be found in division between high-paid professional occupations for men and lower-paid labor like domestic service occupations for women. Another example is when androcentric cultural values dominate, in a society that devalues everything coded as feminine. Such androcentric patterns are institutionalized into popular culture and even in law, especially in those issues relating to family life. They are actualized in everyday life in forms of sexual assault and harassment, domestic violence, and trivializing, among others.

Similar to Fraser, Axel Honneth claims justice in modern societies also has egalitarian features that provide equal rights for all members of society and recognizes autonomy for them. In his point of view, the important condition for justice in modern society is individual freedom.

Individual freedom can be discussed in three models of freedom; negative (freedom from interference by others), reflexive (self-realization, making one's own choices: self-determination), and social freedom, which refers to social conditions necessary for the realization of individual freedom. In fact, reflexive and negative freedom can be realized only on grounds of social freedom. In other words, recognizing others, which is only possible in social institutions, is a constitutive element of the freedom of individuals, such that the individuals have relations of reciprocal recognition within their institutional practices, and there they can find the conditions of their own self-realization.

Self-realization can be actualized in three patterns of recognition, including love, rights and solidarity. Love refers to emotional approval and recognition from primary social relationships like family that leads to self-confidence. The

concept of rights deals with moral responsibilities to others as legal beings, which brings self-respect. The concept of solidarity refers to individualized characteristics that develop self-esteem and provide the human being with the feeling of dignity.

Honneth also explained the important role of personal relationships (including friends, intimate or love and family relations) in generating individual freedom and self-realization as a principle of justice. His discussion on family is of particular consideration for this research. Traditional role-specific tasks such as father, mother and child organized by patriarchy and socially constructed norms have been transformed into a cooperative social relationship based on love, equality and partnership rather than authority and paternalism.

According to Fraser, factors required for justice and equal access to rules and resources include economic redistribution, cultural recognition, and political representation. According to Honneth, personal relationships, market relations, and the public sphere of politics are the factors required for justice. Factors applied in this research are an assortment of both theories, including economic redistribution, cultural recognition, political representation, and personal relationship which is manifested in the family.

The question here is *who should count as the subject of justice?* As Fraser points out, today's globalized world does not restrict the subject of justice to citizens residing within territorial states or boundaries and it should not be understood as simply a domestic relation among fellow citizens. Undoubtedly, the impacts of social processes on individuals' lives overstep territorial borders. In fact, globalization – as a multidimensional phenomenon – alongside objective dynamics, is linked to economics, politics, and technology, and a subjective dimension which refers to an increased consciousness of the world as an interconnected whole (Robinson 2007: 127; Steger and James 2011: 53). The process of globalization has diffused modernity around the world. In this case, modernity means the transformation of conceptions and the premises of relations between various elements of structure. It breaks down all traditional legitimation and brings different possibilities of new political, economic and social orders, which influence the dialectic relation between actor and structure. This rearrangement changes the conception of human agency and defines a new individual identity based on autonomy, and brings liberation from the bonds of traditional political and cultural authority. This new identity emphasizes the participation of individuals in constructing the social and political order, which means more emphasis on the role of individuals in the dualistic structure (Eisenstadt 2002: 5). Justice means the participatory parity in rules and resources of all members regardless of their gender, religion, ethnicity, or culture. Equal participation in constructing the social and political order must be considered as an overall criterion applicable everywhere and which cannot be violated with a justification of 'different culture' or 'religious values'. The Universal Declaration of Human Rights (UDHR) as well as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) can be considered as practical crite-

rion to assess participatory parity, especially related to gender. Therefore, as Benhabib argues, they can be defined as 'cosmopolitan norms of justice' which considers individuals as having certain rights who must "be recognized as moral beings worthy of equal concern and who are equally entitled to be protected as legal personalities by their own polity, as well as in the world community" (Benhabib 2011b, 62). Therefore, admission and commitment to the UDHR and CEDAW does not necessarily mean westernization, following western values or relinquishing cultural differences in a homogenization of cultures and global society. Rather it is the just protection of human/women's rights, providing the conditions for equal access to rules and resources for all individuals which help the fulfillment of justice in the current epoch.

This theoretical framework presents an ideal type of modern society in which there is a dialectical relationship between individual and structure, or more precisely between human reason, and religion as established by revelation. The model also proposes justice to be understood as equal access to rules and resources, regardless of gender in economic, political, and cultural dimensions, as well as in family life. Justice further means adherence and commitment to cosmopolitan norms, as articulated in the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

According to this theoretical model, this study aims to investigate the main streams of Islamic thought regarding three subjects. The first deals with the concept of the individual, including man and woman, and aims to gain the perspectives of each main stream of Islamic thought on the equality of men and women as well as on the self-determination of individual agents in religious doctrine. Accordingly, it discusses the meaning of rights and their changeability, as well as the legitimacy of rights – whether rights are defined based on revelation or human reason, and ultimately if they can be defined based on gender. The second concept is religion as structure. The definition of religion and the approach to the Quran and *sunna* as the source of revelation shall be debated here. The third concept is that of perspectives on the UDHR and CEDAW and their acceptability in Islam.

3 Methodology for Comparative Research on the Main Currents of Islam

Now the methods used in my research will be discussed, including the comparative method, the documentary research method, and expert interviews, which were used in the empirical section of the research.

The comparative method

This research uses the comparative method to compare the perspectives of the main currents of Islamic thought on women's rights and gender equality. Comparison is a fundamental tool in scientific approaches and analysis. It is applied to the intersocietal as well as the intrasocietal. One definition by Pennings (2006) looks at comparative social research in two ways. One is at "the level of political and social systems based on its supposed core subject," and another is by "the means of descriptive features that claim to enhance knowledge about political and social phenomena as a process" (Pennings 2006: 19–20).

The comparative method in the first sense can be traced to two founding creators of Sociology, Emile Durkheim (1858–1917) and Max Weber (1864–1920), who conducted comparative analysis in their work. Both these scholars claim that the comparative method is consistent with the nature of sociological inquiry. However, they differ from one another in their strategy, epistemology and explanation of conducting the comparative analysis (Smelser 2013). Ragin (1989) employs the comparative method to verify the relationship between various phenomena and also "to determine the different combinations of conditions with specific outcomes or processes" (Ragin 1989: 14). It is applied to the exploration of similarities and differences of two or more cases regarding a specific phenomenon, with the aim of achieving a typology towards a better understanding and explanation of the cases. This method also helps to understand and explain divergent formations of a single phenomenon and reveal variations within what is presumed to be a united and undifferentiated category of units (Azarian 2011: 118).

In this research project, this method helps to investigate different interpretations of Islam and the origin of such diversities. The various currents of Islamic thought – to be discussed in this book – are classified into three prominent thought streams based on the compatibility of Islamic jurisprudential laws, with a time and space index, as well as the relationship between human reason and

Islamic jurisprudential laws. If viewed on a spectrum, one end would be the fundamentalists and the other the seculars, with reformists standing in the middle. Therefore, the three main streams of thought and their perspectives on women's rights shall be compared in order to arrive at an understanding of the relationship between various interpretations of Islam and women's right and gender equality.

In comparative research, it is essential to develop a theoretical perspective in order to systematically relate the research question to possible research designs, rather than simply gathering a lot of information (Pennings 2006: 23). Therefore, the three main currents of Islamic thought will be compared through a theoretical model that is illustrated in the chapter on theoretical framework.

The documentary research method

This study uses the documentary research method, which involves the analysis of literature that contains information about the research subject (Mogalakwe 2006: 221). The documents are divided into two general categories: primary documents, which are those written by scholars of the main three streams of Islamic thought, and secondary publications which are previous research works on the relationship of Islam and gender equality, and especially include studies on the views of prominent representatives from each stream of Islamic thought. This study is confined to investigating the representatives' opinions of the main currents of Islamic thought in Iran after the revolution 1979, which is a Shiite Islamic country, in order to gain an integrated perception.

Core aspects of expert interviews

Studying primary documents written by scholars of the main three streams of Islamic thought shows that they do not evince constant standpoints over time. In other words, every scholar has various phases of thought in his life. In some cases there are relatively opposite ideas presented in various publications by an individual scholar. To understand the present positions of these currents, expert interviews were carried out. The expert interview is applied based on the interpretive paradigm of qualitative studies which refer to "those traditions in social research that are rooted in hermeneutic, phenomenological or interactionist approaches and which see as their main task the interpretations and understanding of text" (Klar and Opitz 1997: 342).

In sociology, the interpretive paradigm views social interaction as an interpretative process. This means "the definitions of situations and actions are not explicitly or implicitly assumed to be settled once and for all by literal application of a preexisting culturally established system of symbols" (Wilson 1970: 702); rather, they are open to redefinition by the participants in an interaction

on a specific occasion. Therefore, the participants produce a social world of which they are themselves a part. The normative paradigm, in contrast to the interpretive, assumes that social interaction is governed primarily by rules and norms (Farrington and Murray 2014: 28). In this regard, interpretive qualitative research is a form of inquiry in which researchers have their own interpretation of what they see, hear, and understand, which can be completely different from the interpretation of their readers as well as the participants of the study (Creswell 2009: 176) Accordingly, the categorizing of a stream of thought or a representative based on certain indicators may be different from what that group or representative define for themselves.

The interview methodology

This study employs the expert interview to collect updated information, complementing insights coming from applying other methods such as a literature review. Bogner and Menz (2009) distinguish this sort of interview as the *systematizing* expert interview in their threefold typology of expert interviews. Here the expert interview is not used singularly, but is seen as a complementary method. This is referred to as 'triangulation' (Flick 2014: 230). Furthermore, expert interviews in this research project can be considered as theory-generating, as suggested by Bogner and Menz in their typology, since they help develop theories on the insights of different streams of Islamic thought, "from reconstructing the knowledge of various experts" (ibid. 228)

In the course of this study, semi-structured expert interviews with open-ended questions were conducted with representatives of the three streams of Islamic thought. Since all representatives or experts were requested to express their views about the same themes, the results obtained through these semi-structured interviews can be compared with each other (Nohl 2012). Consequently, such comparison can lead to an understanding of the current debate on gender equality in mainstream Islamic thought.

The interview sample

The sampling in this study follows a specific, predetermined criterion (Przyborski and Wohlrab-Sahr 2014: 182). The streams of Islamic thought to be discussed here are categorized as: Fundamentalist, Reformist and Secularist. Such a categorization is based on each group's perspectives on the changeability of Islamic jurisprudential laws in a time and space index as well as the independence of human reason from revelation. If plotted on a spectrum, extreme fundamentalists would be on one end while extreme seculars will be on the other. Reformists are situated in the middle. Using the term *secular* to describe one stream of Islamic thought does not mean that they are anti-religious or irreligious, but that they try to settle "rules about the 'proper place' of religion without rejecting religion as such" (Burchardt et al. 2012: 6).

Since the researcher is a woman and the subject of research is women's rights in Islam, conducting an interview with representatives of extreme fundamentalism was not possible. Instead, the representatives of fundamentalist-oriented thought who were interviewed were those who stand close to reformists on the spectrum of Islamic thought. There were three informants coming from this particular group. Some of the interview partners are anonymized because of possible political implications. The first interview partner, "A" did not agree to a direct interview but had asked his son to receive the questions and to deliver his answers. The other two representatives of this group – "B" and "C" – were interviewed directly in Teheran and Qom.

"D", "E", and "F" were interviewed as representatives of the reformist-oriented thought stream. They are recognized as the most significant and influential representatives and intellectual leaders of reformist thought in Iran. Since "D" lived in the United States at the time of the interview, the interview was conducted through Skype, while the other two interviews were conducted in Bonn, Germany. In the third group representing the seculars, Mojtahed Shabestari and Mostafa Malekian were interviewed in Tehran. These men are recognized as the only prominent representatives of the religious secular view in Iran. All eight interviews, with an average duration of 120 minutes, were conducted from January – June 2011.

These representatives were chosen as informants for this study since they are recognized socially as experts in this context (Bogner and Menz 2005: 61, 98). All of the experts in this study are male, since there was no female socially identified as an expert in Islamic theology. The female informants within the reformist or secular orientation were identified as experts in Women's Studies in Islam rather than experts in Islamic theology.

In an expert interview, the experts are considered as representatives of a group rather than as a 'whole' or singular person (*Person als Ganzes; die gesamte Person*) (Meuser & Nagel 2005: 72), and their arguments for a certain subject represent the view of this group on that subject. However, each expert's life experience and his knowledge of philosophy and the history of theology, as well as debates on global issues such as human rights, justice, etc. have influenced their insights and expert knowledge, which are discussed in this study.

Creating structure and guidelines for interviews using the main questions

The structure of all the interviews was determined by specific main questions that follow certain issues of interest for the study. This facilitates a systematic order of information that allows the researcher to make comparisons between interviews (Kruse 2014: 213). Guidelines relate theoretical considerations to qualitative methods of collecting data. Though the guidelines could be drawn from the theoretical framework, they are not themselves theoretical questions; rather they are oriented to the research field and are intended for acquiring the necessary information needed to answer the research questions (Gläser and Lau-

del 2009: 90–91). Therefore, the guidelines establish a connection between the theoretical frameworks that inform the concepts that are used to define the research problem (Silverman 2010: 104), and are used in the empirical part of the research to gain answers to the research questions.

While there are guide questions, the interviewee is allowed to explain in more detail and in greater depth other aspects of the subject matter that are not necessarily mentioned in the guidelines. As such, the main points raised by the interviewee were followed with 'immanent questions' (Helfferich 2011: 105) aimed at further elaboration of that point. This resulted in a narration that highlighted more aspects rather than provided a direct answer to a specific question. Therefore, the guidelines were not strictly followed, although all points mentioned in the guidelines were discussed.

The guide questions were designed based on the "*Sammeln, Prüfung, Sortieren, Subsumieren*", more commonly known as the SPSS-Method, developed by Helfferich (2011: 182–189). The first step, *Sammeln* refers to collecting questions and brainstorming. In the second step, *Prüfung* means verifying questions based on their relevance to gaining proper information. Then, in the next step, *Sortieren* refers to sorting the questions according to their content. In the last step, *Subsumieren*, the verified and sorted questions are subsumed into the guidelines. The resulting guidelines were reviewed by a cleric who was familiar with religious terms, in order to make sure that the concepts used in the guidelines would be similarly understood by the interviewees.

Designing the main interview questions

The suggested theoretical model in Chapter Two presented an ideal type of modern society in which there is a dialectical relationship between individual and structure, or more precisely between human reason and religion as established by revelation. The model also proposed justice to be understood as equal access to rules and resources, regardless of gender in economic, political, and cultural dimensions, as well as in family life. Justice further means adherence and commitment to cosmopolitan norms, as articulated in the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

According to the theoretical model in this study, the guidelines for the expert interviews are categorized into three groups. The first group deals with the concept of the individual, including man and woman, and aims to gain the informant's perspective on the equality of men and women in religious doctrine as a representative of his respective stream of Islamic thought; for example, in creation as well as in nature and biology. This group of guidelines also investigates the role of human reason in the relationship between the human being and his creator, as well as with other individuals in society. The concept of rights is discussed in this section to ascertain the respondent's view on a human being's identity as rights-bearer or obligation-holder to God. Accordingly, it discusses

the meaning of rights and its changeability, as well as the legitimacy of rights – whether rights are defined based on revelation or human reason, and ultimately whether they are defined based on gender. The second group of guidelines refers to religion as structure. The definition of religion and the approach to the Quran as the resource of revelation shall be debated here. The third group of guidelines investigates the interviewee's perspective on the UDHR and CEDAW and their acceptability in Islam. The last guideline, about the current legal instructions related to women's rights in Iran as Islamic laws, tries to achieve an understanding of different currents of thought on equal access related to gender, rules and resources in different realms of life – economic, politic, cultural and family.

The guidelines:

The three groups of guidelines applied in the research are as following:

Individual agency

- What is the role of gender in defining the equality of men and women in the Islamic doctrine?
- What is the role of human reason in the relationship between human beings and God as well as society
- What is the role of human reason in defining human rights? Are human rights constant or changeable?
- How do differences between genders effect how their respective rights are defined?

Structure

- What is the place of Islamic law and *fiqh* (Islamic jurisprudence) in your definition of religion?
- Is the Quran a direct word from God or is it an outcome from the Prophet's experience (Interpretation)?

UDHR and CEDAW as the criteria for global norms of justice and human dignity

- Can the UDHR provide a foundation for justice and human dignity?
- Can the CEDAW provide a basis for gender justice?
- Can the current legal instructions related to women's rights provide justice in society? How do you evaluate the laws related to women's rights in the economic dimension (such as right to work, inheritance, etc.), political dimension (executive tasks such as appointing women as judges or president, etc.), cultural dimension (such as women's veiling, etc.) , and in the family (such as polygamy, right to divorce, temporary marriage, etc.)?

The interview analysis

The interviews were recorded and transcribed. Although all interviews were transcribed verbatim in Persian, only the relevant passages for the interview guideline questions were translated verbatim in English. Nonverbal expressions (such as laughing, harrumphing, coughing, and stammering) were transcribed, only if they changed the meaning of a statement (Gläser and Laudel 2009: 194).

To analyze the interviews, 'thematic evaluation' (Kruse 2014: 206) was applied. The focus of evaluation is in reference to the themes on which guide questions are based. Therefore transcribed interviews were categorized and coded based on concepts determined by the guide questions. This means categories and codes were predetermined and derived from the guidelines, which in turn were deduced from the theoretical framework as well as research questions, and the data from interviews were fitted to them. As Creswell (2009) points out, while "the traditional approach in social sciences is to allow the codes to emerge during the data analysis", for this study it was helpful to have "a larger theoretical perspective on the research" (Creswell 2009: 187). In this case, 'thematic comparison' (Flick 2014: 237) using the codes and categories leads to a theoretical comparison between interviews in order to gain an "interpretation of the larger meaning of data" (Creswell 2009: 189), as well as provide comparability of the current ideas of interviewees with their views mentioned in their publications. Furthermore, interviews within the same group were compared to get more detail about the views of the Islamic mainstream. This facilitates a presentation of differences and similarities among perceptions of various currents of thought in Islam.

Methodological norms and qualitative research

There are three classical criteria to assess the procedure and results of research, namely reliability, validity, and objectivity. However, some writers prefer to use different terminologies for such criteria in qualitative research. For instance, Guba suggests four criteria to assess trustworthiness in a qualitative study: credibility, transferability, dependability, and confirmability, which are used in this research.

Credibility refers to an internal validity which ensures that the study measures what it is actually intended to measure. Credibility can be gained through a technique such as triangulation (Guba 1981: 85), which means taking different perspectives on the issue under study by using several methods, or several theoretical approaches, as well as combining different sorts of data about theoretical perspectives, which are then applied to the data (Flick 2014: 184). In this study, the data and information about various streams of Islamic thought are obtained from documents and a literature review, providing a basis and background for the research issue. This is complemented by expert interviews to explain and verify particular details in the current attitudes and outlooks of the streams of thought in Islam.

Furthermore, the guideline questions for the expert interviews were discussed among peers and academic colleagues, to investigate and re-analyze the relation between theoretical concepts mentioned in the guidelines drawn from the theoretical framework, in order to gain data correctly. In this process, the researcher had the opportunity to widen her vision by gaining constructive ideas and interpretations from peers and academics. Guba considers such meetings and sessions as *peer debriefing*, which according to him is another method of obtaining credibility (Guba 1981: 85).

Transferability refers to external validity or generalizability, which shows to what extent the findings of one study are generalizable to other situations. While some qualitative researchers consider findings as specific to the particular circumstances of the study and not applicable to other situations, other researchers have a contrasting view (Shenton 2004: 69). In this study every expert is considered as a representative of a broader stream of thought. Therefore, transferability cannot be rejected.

Dependability is another term for reliability. Reliability refers to the consistency of the findings of a study with a replicated inquiry with the same context and the same methods, or at the same moment using different instruments (Flick 2014: 481). The dependability of data and procedures in interview-based studies implies that "such repetition is rather an indicator of a prepared statement, in which some relevant aspects may have been left out, rather than a confirmation of the correctness of what has been said" (ibid.: 483), but nevertheless, since the expert interviews in this study were conducted among representatives of various streams of thought, it is expected that the data and explanations obtained from experts do not change in general. However, time and space are important factors in which individual experts may change their ideas and perceptions.

Confirmability relates to objectivity which requires that the instruments applied in the study should be independent of human skill and perception. In qualitative research this is not conceivable, since all questions are designed by human beings. Therefore, here confirmability means that the findings of the study are a result of research rather than the preferences of the researcher. One method to achieve confirmability is triangulation, which was mentioned earlier as a means to gain credibility (Shenton 2004: 72). Though it should be noted that the results from several methods could be different, either complementary or contradictory. In both cases there may be a theoretical explanation for the different results rather than a problem in the confirmability of the research (Flick 2014: 191). In this study, using triangulation by comparing the results from the literature review and expert interviews shows, in some cases, confirmability and, in other cases, complementary results.

4 Women's Rights in Iran and CEDAW: a Comparison

4.1 An Overview on the History of Women's Rights in Iran

Iran has undergone two important revolutions in its modern history: the Constitutional Revolution (1905–11) and the Revolution of 1979. Women played essential roles in promoting both events with the hopes of achieving a better future and to be recognized as independent citizens with equal rights. However, neither of the revolutions brought women many civil rights, and the Revolution of 1979 actually deprived women of rights they gained since the Constitutional Revolution. This chapter briefly examines the rise and fall of women's rights in Iran since the Constitutional Revolution.

The Constitutional Revolution (1905–1911)

Women were involved in political activities prior to the Constitutional Revolution that served as a model for collective political efforts utilized during the revolution. One notable example is that of the Tobacco Boycotts, when Nasir al-Din Shah (1831–1896), the fourth shah of the Qajar dynasty (1794–1925) allowed and promoted the British to have a full monopoly of the tobacco industry. This British domination led to enormous protests throughout Iran in 1891 through enacting a wide scale boycott of tobacco. Women participated in these public protests, which even included violent attacks perpetrated by public officials. They participated in street riots, in fights and armed clashes, and joined underground activities. Mass protests and the successful boycott forced the government to cancel the tobacco concession in 1892 (Paidar 1995, p.50–51).

The Constitutional Movement is generally recognized in the history of Iran as the beginning of women's participation in political processes in order to achieve citizens' rights. The movement consisted of a coalition of intellectuals, bazaaris (the merchants and workers of bazaars, the traditional marketplaces of Iran), the ulama (religious scholars), and women. The overall goals of the Constitutional Revolution aimed to centralize the state, to replace arbitrary power and a despotic government with a representative system, and to constrict the power of the clerical authority and their judicial control over the state. However, Iranian women had further goals, including access to education and political enfranchisement. Women began to form their own opinions about their situation in Iran and the necessity of recognizing the importance of women's contribu-

tions in a modern society through organizing communication networks and secret societies. They believed that reforms in the status of women were essential alongside improvements in other political and economic dimensions. In their activities in the era of the Constitutional Movement, women also became able to utilize the publication process, and establish newspaper and journals not only to discuss the activities of constitutionalists, but also to promote women's issues such as economic and educational equality, as well as the issue of the veiling of women (Afary 1996, Sanasarian 2013).

Education became a primary issue for women during the Constitutional Movement, as it was defined as being for men only, and women were considered to be incapable of learning. Education was viewed as a means for women to undertake responsibilities outside of the home and a necessary step towards allowing women to participate in the government. After serious efforts of pioneer women in this period, they established girls' schools and gained access to education (Paidar, 1995; Sanasarian, 1982; Afary, 1996).

The issue of women's suffrage was raised for the first time by Vakil al-Ru'aya, the deputy from Hamadan in the second Parliament in 1911. As new electoral law was drafted and debated which resulted in women being listed as disallowed to vote, he argued the idea of legal equality between men and women as creatures of God and defended women's right to vote. His argument was rejected by the other deputies. The logic behind not allowing women to vote was, as Mudarris argued, "God has not endowed them with the ability to be electors". Mudarris considered women 'among the weak', whose 'minds do not have the capacity' to engage in politics. He also referred to the Quran verse (4:34) which mentions 'men are in charge of women'; and in this way he claimed "they will have absolutely no rights to elect. Others should protect the rights of women" (cited in Amin 2002: 30–40).

Although the constitution did not grant women the right to vote, women's contributions to the Constitutional Revolution were the beginning of a new era for women in Iran. It legitimized the integration of women and men in society, established the necessity of women's education, and raised women's issues such as family relations and veiling as a public and national concern. In fact, the Constitutional Movement was the opening for women's entry into society and into sociopolitical activities, as well as recognizing their issues and enabling them to organize themselves to claim their civil rights.

Women's Rights in the Pahlavi Era (15 December 1925–11 February 1979)

The Pahlavi dynasty was founded by Reza Shah Pahlavi in 1925 after a specially convened assembly deposed Ahmad Shah, the last ruler of the Qajar dynasty. Reza Khan was named as the new Shah of Iran.

Reza Shah Pahlavi (reign: 1925–1941)

As the first ruler in the Pahlavi dynasty, Reza Shah aimed to build a modern nation-state through Westernization, although he also wanted to end Western privileges. His efforts included strengthening the army, encouraging industry, improving infrastructure such as roads and railways, and promoting the secularization of the state. Reza Shah's image of a modern society included significant changes for women. Unveiled women wearing European clothes and working in appropriate jobs, like teaching, were a symbol of modernization (Sedghi 2007:64; Keddie 2007: 84). Under this ideology, Reza Shah made significant advancements for women in terms of education and legal rights relating to family issues. However, women still faced many challenges under his reign, including the continued denial of voting rights.

Education was a powerful tool to spread the Shah's ideology of a more modern and 'Western' Iran. The Ministry of Education was created in 1910 by Parliament, but it was under the strong influence of the clergy and was dominated by religious teachings. Reza Shah secularized the education system by taking it from the religious authority into the state domain. He further expanded girls' schools and established secondary and vocational schools for girls. In 1936, women were admitted to the University of Tehran, two years after its establishment in 1934. Many European professors were hired at the University and many students were sent abroad, but women were excluded from such programs (Sedghi 2007: 70–71). These improvements in the education system for women also promoted women's participation in the labor market and increased rates of employment (Amin 2005, Paidar 1995).

Reza Shah also made reforms in the legal system relating to family life which had previously been governed by Islamic laws. In 1931 a law concerning marital age raised the age for both men and women and recognized that a marriage contract should be based on 'physical aptitude' rather than age. The law raised the age for females from 9 to 15 and for males from 15 to 18. Other new laws further granted women the right to ask for divorce, although only under certain conditions. In conformity with Islamic laws, the man still had the absolute authority to divorce. However, marriage and divorce proceedings were relatively secularized, as both actions were required to be notarized and registered in civil bureaus rather than in religious courts. In other areas of family law, such as polygamy, custody, inheritance and guardianship, the family remained intact and based on Islamic laws in favor of men (Sedghi 74).

In January 1936, Reza Shah issued a decree calling for the unveiling of all women, which was influenced by Attatürk and his secularist gender policies in Turkey. In some cities, *gendarmes* enforced the unveiling by physically pulling off women's chadors. Women were beaten for wearing veils, shops were prohibited from selling goods to veiled women, and buses as well as baths were forbidden to provide services to veiled women (Ettehadieh 2004: 99). The pressure fell more on urban women, due to the lack of state presence in the countryside. The unveiling law marginalized the majority of religious urban women by cre-

ating a sense of fear if they left the home, which discouraged women from accessing education and employment, and from participating in public activities. Consequently the law of unveiling failed to bring any liberation to religious women (Hoodfar 1999; Sadeghi 2010).

Under Reza Shah's reign and despite his claims to modernize women's status, women's demand for electoral rights to the Iranian parliament was rejected. Through his efforts to centralize Iran, the Shah required control over all political groups, including women's organizations. In the 1930s many women's groups and organizations either incorporated into the state structure or gradually retreated because of strict censorship regarding what they could say or publish. Several women's magazines were banned from publication in this era (Keddie 2007: 76; Hoodfar 1999). Independent groups were discouraged as the state-sponsored 'Ladies' Center' was promoted, which was also under the leadership of the Shah's oldest daughter, Shams.

Mohammad Reza Shah Pahlavi (reign: 1941–1979)

During Mohammad Reza Shah Pahlavi's reign, the laws put in place by his father became more relaxed and there were several attempts to achieve women's suffrage in Iran. However, the majority of these attempts were condemned by the clergy and were unsuccessful until 1963.

The ideology of the clergy held that according to Islamic laws, voting was restricted to men, while women's duties were confined to housework, motherhood, and childbearing. In their view, the existing laws protected women and any alteration would destabilize political order, bring social crisis, and lead to religious decline. Every effort for women's suffrage was condemned by the clergy, who viewed the political empowerment of women to be a 'collapse of public morality' (Esfandiari 1997: 27). Clergy leaders, such as Ayatollah Khomeini, mobilized religious followers to form mass protests against women's suffrage in the name of Islamic law. The opposition imposed by the clergy shaped the political discussion and will within Iran and greatly delayed the acquisition of women's suffrage.

One of the first efforts towards women's suffrage in this period was initiated by the Democrat Union of Women, the women's organization of the Tudeh Party. The Tudeh Party was a branch of the Iranian Communist Party which aimed to achieve equal rights for men and women. The Democratic Union of Women created a women's suffrage bill in 1944 and they collected over 100,000 signatures in support. However, the bill was defeated in Parliament.

Several Prime Ministers attempted to promote women's suffrage. In 1946, Prime Minister Ahmad Qavam submitted a women's suffrage bill, which was defeated by the clergy's opposition (Sedghi 2007; Hoodfar 1999; Burki 2013: 209). Prime Minister Mossadegh granted women limited voting rights in district and village council elections. Mossadegh also wrote an electoral reform bill, which would have given women the right to vote. However, the clergy opposed

this action and they ultimately forced Mossadegh to withdraw the bill before it was even debated in Parliament. Women's suffrage was eventually debated in 1959, but was once again defeated by the clergy (Burki 2013: 211). In 1962, the government of Prime Minister Asadollah Alam announced a new Local Councils Law that allowed women to vote in the local council elections. However, the clergy opposition caused the government to publicly withdraw this law.

On January 9, 1963, Mohammad Reza Shah announced his White Revolution program, which included women's enfranchisement as one of its six points of action. The points of the program included: "1. land reform; 2. sale of government owned factories to finance land reform; 3. a new election law including women's suffrage; 4. the nationalization of forests; 5. a national literacy corps, mainly for rural teaching; and 6. a plan to give workers a share of industrial profits" (Keddie 2006:145). In order to legitimize the program, the Shah called for a national referendum. Unsurprisingly, the clergy did not support these reforms and Khomeini argued that "by granting voting rights to women, the government has disregarded Islam and has caused anxiety among the Ulama and other Muslims" (cited in Kian 1997: 76).

Both sides of the issue organized protests about particular aspects of the White Revolution program. On January 22, 1963, the clergy organized demonstrations and strikes to protest the program, especially land reform and women's suffrage, including the fact that women would be allowed to participate in the referendum. The next day, women went on strike to demand their enfranchisement and their right to participate in the referendum. Participating women included teachers, nurses, public and private employees.

The referendum on the White Revolution was held on January 26, 1963 with the participation of both men and women. The referendum passed without difficulties and was ultimately ratified on March 3, 1963. Accordingly, the Electoral Law of 1909, which deprived women – along with people who were insane and minors – of the right to elect their representatives and debared women from being elected to the parliament was amended to recognize women's enfranchisement. As a result, six women were elected as Parliament (Majlis) deputies, two women were appointed by the Shah to the senate, and the Shah appointed Farrokhru Parsa as the first female Minister for Education (Sanasarian 1982: 79–100).

Women's participation in civil society aimed to achieve further equal rights for women in Iran. The Shah's twin sister Ashraf Pahlavi established the High Council of Women's Organizations in 1959 and subsequently the Women's Organization of Iran (WOI) in 1966. Although this structure clearly shows nepotism and dependence on the Shah, the WOI implemented many improvements for women in Iran. These include the establishment of family welfare centers, health, education, legal aid, childcare facilities, vocational training and free contraception (Sedghi 2007: 97–8). The WOI also played an important role in drafting the Family Protection Law (FPL) in 1967, which was subsequently revised in 1975 and brought some reforms in the area of family law, including age restrictions for marriage, divorce, child custody, and polygamy (Poya 1999: 51).

The Family Protection Law made significant advancements for women's rights in Iran. The FPL gave a woman the right to sue for divorce if her husband took a second spouse without her consent. In this way, the FPL aimed to restrict polygamy, but not to abolish it. Previously, when a marriage ended in divorce, child custody was immediately granted to the father. However, Article 9 of the FPL changed this process and declared that child custody would be based on a court's decision. The FPL further raised the age of marriage to eighteen for women and twenty for men, although girls over the age of fifteen could get married with the permission of the Family Protection Courts. Article 16 of the FPL made it more difficult for a husband to prevent his wife from employment, becoming possible only if he could prove that his wife's job damaged the dignity and prestige of the family. Women also received the same right to prevent her spouse from entering into inappropriate work.

In 1973, the state legalized abortion and excluded medical intervention from the list of crimes (Sedghi 2007: 140; Poya 1999: 51, Simon: 25). The act of abortion was further simplified by an executive bylaw in 1976. This enabled parents, as well as single mothers, with justified and sufficient reasons to have unrestrictive abortion before 12 weeks of gestation. The physician was the person responsible for evaluating this justifiability (Shamsi Gooshki et al. 2014: 73).

The clergy continued to oppose the FPL and to promote Islamic laws. Khomeini described his discontent with the FPL, saying:

> The law that has recently been passed by the illegal Majles under the name of the Family Protection Law in order to destroy Muslim family life, is against Islam, and both its originators and implementers are guilty before the *shari'a*. Women who are divorced in family courts should consider their divorces as null, and if they remarry they are committing adultery. Whoever marries such women knowingly is also an adulterer, and should be punished according to the *shari'a* by whipping. The children of these men and women are illegitimate and are not entitled to inheritance (Khomeini 1984: 314).

However, some controversial Islamic laws remained intact after the FPL. One includes the Passport law, which bans married women from leaving the country without notarized permission from their husbands. Another contentious law was Article 179 of the Criminal Code, which assigned no punishment to a husband who murders his wife after finding her with another man (Sedghi 2007: 149; Esfandiari 1997: 31).

The era of the Pahlavi dynasty was very important in the struggle for women's rights in Iran, in which women achieved some of their demanded rights despite all critics and weaknesses. This era also demonstrates the tension between the clerical community and women's struggle for civil and equal rights.

Women's rights after the 1979 Revolution

The Revolution in Iran occurred between spring 1977 and February 1979 to protest against the monarchy for several reasons, including economic deprivation, political repression, and identification with Islam. The Revolution brought many groups together that previously did not have close ties due to religious or class differences, including women's groups, men, and clergy. Women's involvement in protests included wearing the veil as a symbol of political protest against the secular pro-West monarchy with the hopes of removing the monarchy and achieving a better future without gender discrimination (Moghadam 2003: 98). Their revolutionary inspirations and their attendance at public struggles against the Shah's regime, in cooperation with men, caused Khomeini to change his stand and to affirm women's political rights as a religious duty: "Women have the right to intervene in politics. It is their duty… Islam is a political religion. In Islam, everything, even prayer, is political" (Khomeini 1979 cited in Kian 1997: 76).

Nevertheless, only a few days after the revolution on February 26, 1979, Ayatollah Khomeini abrogated the Family Protection Laws of 1967 and 1975, claiming it opposed Islam. With this annulment, some women's rights in both the public and private realm regressed to their previous form based on Islamic jurisprudence. For instance, the minimum marital age for women was reduced from eighteen back to nine, and divorce and child custody rights were left entirely to men. Polygamy was reintroduced, despite being restricted in the former law. Women lost their right to serve as judges on March 3, 1979, which was reaffirmed with new legislation entitled the Judges' Appointment Conditions Act in 1982 (Kar 2012:2). Furthermore, women were banned from being solo singers or being sent to other countries as diplomats, as these acts were perceived to be against *Shari'a* (Kar 2010:7). On March 7, 1979 Khomeini imposed an edict to force women to take up the Islamic dress code (*hijab*) at their workplaces. Women demonstrated against the veiling imposition on March 8–9, 1979 which successfully postponed enforcement of the decree until July 7, 1980. In 1983, the Parliament passed the Islamic Punishment Law that stipulated seventy-four lashes for violating the Islamic dress code in public spaces. These rules were extended in 1995 when "a note to Article 139" of the Islamic Criminal Code reaffirmed the governmental penalty by mandating ten to sixty days of imprisonment for those who publicly resisted the *hijab*" (Sedghi 2007:201). These new regulations divested women of many rights they had gained over the years of the Pahlavi regime.

The war era (September 22 1980–August 20 1988)

The Iran-Iraq war allowed the Islamic government to justify crushing organized political groups and oppositions, including women's organizations. This led to a repressive regime, where many activists went into exile, while others were arrested, imprisoned, and executed. Nevertheless, women began to publish journals to publicize women's issues and to criticize the government's gender poli-

cies in a milder tone that was more acceptable for the hardliners. More Muslim women participated in criticizing the government from an Islamic framework, emphasizing the importance of building a just Islamic society. These women challenged discriminatory conditions through their reinterpretation of judicial texts that the government used to justify gender discrimination. Such efforts contributed to the emergence of the Islamic Feminist movement, which involved both domestic and international forces that sought to present a new gender vision on a women-centered interpretation of Islamic text (Hoodfar 1999; Sadeghi 2010).

One significant change in the laws related to women in this era was Khomeini's edict on granting the widows of martyrs in the war custody of their children, even after remarriage. Although this right was confined to the widows of martyrs rather than all women, it created a precedent for changing Islamic laws which were not supposed to be subject to any change. Despite the law's limited scope, it was the beginning of recognizing the possibility of further changes in Islamic laws in favor of women (Hoodfar 1999; Mir-Hosseini 1996b).

The era of the Presidency of Akbar Hashemi Rafsanjani (August 3 1989–August 2 1997)

The presidency of Akbar Hashemi Rafsanjani is characterized by a more moderate interpretation of Islamic texts regarding women's rights. Rafsanjani followed more pragmatic and moderate foreign and domestic policies to provide Iran with a better position in the international community. He pursued policies of liberalization with practical national interests over Islamic ideology and ideological perspectives. In his view, the goal of Islam is to achieve a better quality of life: "we want this world and the next world both, ideals and welfare together – this is attainable" (cited in Esposito and Voll 1996: 69). The merging of Islam and government after the revolution raised question on economic and social issues, which required scholars to seek more modern interpretations of Islamic law and to provide the government with a modern religious analysis. Rafsanjani's efforts went beyond the political and economic spheres and included promoting some measures to improve the status of women in Iran as well.

At the beginning of his term, more journals and magazines (including those for women) gradually emerged, despite the censorship and threat of losing publication licenses. Seyed Mohammad Khatmi, the head of the Ministry of Islamic Guidance and Culture, even removed some government restrictions on films, music, art, literature and journals. However, the Parliament forced Khatmi to resign in 1992 after fearing that his policies promoted un-Islamic values.

Despite the prevalence of traditional roles for women based on outdated interpretations of Islamic texts, women became much more involved in civil society. Wives and daughters of high government officials established women's organizations and these women organized and attended conferences concerning women and family issues, including the UN Conference on Population and Development in Cairo in 1994 and the Fourth World Conference on Women in Beijing in 1995.

The government further established organizations that addressed women's issues. In 1988, the Social and Cultural Council of Women was created to promote women's economic and social activity. Furthermore, in 1992, the government initiated the Office of Women's Affairs, which was designed to improve women's status and to report any problems and shortcomings directly to the president. These organizations, despite their government-appointed members, provided forums for women's complaints and they drew attention to women's concerns and gender discrimination (Kian 1997:81, Hoodfar 1999).

One significant legal change during Rafsanjani's presidency was the amendment to the divorce provisions in 1992. According to these changes, registration of divorce required a court certificate; women were allowed to be appointed as advisory judges in family court (in cooperation with the main male judge); and men were required to pay their wives for their housework (Mir-Hosseini 1996). This highlights how women's economic activity outside the home was gradually recognized, but housework and childcare were still regarded as women's main responsibility. Khamenei, the Islamic Republic's Supreme Leader (4 June 1989 -) argued: "Islam authorizes women to work outside the household. Their work might even be necessary but it should not interfere with their main responsibility that is child rearing, child bearing and housework. No country can do without women's workforce but this should not contradict women's moral and human values. It should not weaken women, nor compel them to bend or to stoop low" (cited in Kian-Thiebaut 2008).

Throughout the 1990s, Rafsanjani also introduced a family planning program, "Less Children, Better Lives" that was designed to reduce the rapid population growth in Iran. The program included subsidized free condoms, vasectomy clinics, affordable contraceptives, and nationwide education on family planning for married couples. Accordingly, the total fertility rate in the 1980s (6.5) dropped to 2.0 in 2000, 1.9 in 2006, and ultimately to 1.6 in 2012. The program was considered successful, especially concerning reducing fertility rates in rural areas (and in one generation) from 8.1 to 2.1 children (Esfandiari 2010).

The era of the Presidency of Seyed Mohammad Khatami (August 2 1997–August 3 2005)

At the beginning of Khatami's presidency, he attempted to promote a reformist agenda "from Islamic Ideology to the Reform of Islam" (Amir Arjomand 2009). Despite Khatami's reformist actions, he encountered opposition from the fundamentalists who dominated Parliament. Under this context, many efforts were made to promote women's rights and while some were successful, the opposition blocked many reformist actions.

Khatami won the 1997 election with seventy percent of the vote, which demonstrates the hope and optimism of people for political reform and social change in Iran. Throughout both of his terms, Khatami advocated for freedom of expression, political tolerance, civil society, equal opportunities, rule of law, women's rights, and constructive diplomatic relations with other states. The United Nations endorsed

Khatami's 'Dialogue of Civilizations and Cultures' and declared 2001 as the United Nations' Year of Dialogue Among Civilizations."[9] Civil society prospered in this era with more press, the closer coordination of all women activists, and the opening of the Center for Women's Participation. The center had the task of empowering women to run non-governmental organizations to reinforce women's participation in the sociopolitical, economic, and cultural process of civil society and to provide women with more freedom in the public sphere (Sadeghi 2010). Many women's groups took advantage of Khatami's 'Dialogue of Civilizations' and sought to participate in various international meetings and conferences, particularly in Asia. These opportunities allowed Iranian women to share their experiences with other women's activists, to gain new insights about women's issues in other regions, and to enter the global women's movement (Tohidi 2002). Khatami also promoted women's rights by appointing women to significant political positions. Masoumeh Ebtakar, the first female Vice President of Iran, was appointed as head of the Department of Environment and Zahra Shojaee was appointed as the Director of the Center for Women's Participation. These appointments led to a change in public attitudes and behavior about taking women's work more seriously.

However, only a small amount of legal reforms passed during Khatami's presidency. These limited reforms are especially surprising, as the sixth Parliament had thirteen female representatives that aimed to remove obstacles hindering women's progress. The minimum age of marriage and the age of penal responsibility for girls increased from nine to thirteen, although girls as young as nine could be married with the permission of the court. Another reform lifted the ban on unaccompanied single women studying abroad on government scholarships. Women were also granted custody of boys and girls up to seven years of age (the previous law entitled mothers to have custody of boys up to two years and girls up to seven). Decisions about custody of children after the age of seven were given to the court. However, other articles and reforms that promoted women's rights provided by the sixth Parliament were rejected by the Council of Guardians[10] (Koolaee 2012; Esfandiari 2010). Another reform included the 'law on insurance

[9] United Nations Educational, Scientific and Cultural Organization (UNESCO). 2001. Dialogue among Civilizations. Available at: http://www.unesco.org/dialogue/en/background.htm (26 June 2015).

[10] Article 91 of the Constitution introduces the Guardian Council with the following terms: "With a view to safeguarding Islamic commands and the Constitution, so that the legislation of the Islamic Assembly are not in contravention with them, a council named the Guardian Council shall be established composed of the following: 1) Six clerics, just and acquainted with the needs of the time and problems of the day. These individuals will be appointed by the Leader or the Council of Leadership; 2) Six jurists who are qualified in various branches of law, from among Muslim jurists, introduced to the Islamic Assembly by the Head of the Judiciary and appointed with the approval of the Assembly." Also according to article 96, the majority of the clerics of the Guardian Council will decide whether the legislation passed by the Majlis is in conformity with the precepts of Islam, while the decision with regard to the conformity of the acts with the Constitution comes from the majority of all members. A bill is passed into law after it is passed by the Majlis, approved by the Guardian Council, and signed by the President (Kar 2010: 44).

for women' which was passed by the sixth parliament and ratified by the seventh. The law aimed to entitle women to family property at the time of divorce and it was particularly important for many women who did not work in the formal sector of the economy. The seventh parliament also passed the 'equality in blood money insurance law' which stipulates that insurance companies are obligated to pay equal blood money to men and women, in the event that it is required (Koolaee 2012). Iran's abortion law was also amended in 2005, which stipulated:

> performing abortion by physicians is permitted with a definite diagnosis of retardation or malformation of the fetus that is unbearable for the mother, or is a life-threatening disease of the mother, by three specialist medical doctors and the verification of the Legal Medicine Organization (LMO). This act allows therapeutic abortion (TA) with the mother's consent, only before ensoulment that is considered four months after conception. In addition, the list of maternal and fetal problems that legally justify TA is open and the LMO holds the authority to verify such diseases (Shamsi Gooshki 2014:77).

However, according to this law, if a woman is pregnant as a result of rape, she still does not have the right to an abortion.

Many of Khatami's reformist efforts were often blocked by the fundamentalists, and he 'declared publicly that he lacks sufficient powers to implement the constitution and the rule of law' (quoted in Moghissi and Rahnema 2001). For instance, both the Guardian Council and the judiciary[11] (which have always been under conservative control)[12] limited policies by refuting legislation and pursuing legal action against anyone who challenged the system. These circumstances restricted the scope of freedom for the press and the actions of civil society. By May 1999, nineteen reformist newspapers were shut down and a number of reformist leaders were arrested (Vakil 2011: 140). The conservative and fundamentalist views remained rooted in the ideology that women must stay at home and perform household duties and raise children while men work to earn money and manage the family (Koolaee 2012).

One notable unsuccessful effort in this era was the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW was ratified by the reformist government and approved by parliament. However, the Guardian Council ultimately rejected it, arguing that it was incompatible with Islam. The Guardian Council then disqualified most reformist candidates from participating in the seventh and eighth parliamentary elections, which enabled

[11] According to Article 156 of the Constitution of the Islamic Republic, the judiciary is 'an independent power'. And according to article 157, the head of the judiciary is to be a just Mujtahid appointed by the Supreme Leader and serve for a period of five years.

[12] Since the head of the judiciary and also six clerics of the Guardian Council according to the Constitution are appointed by the supreme leader, through these arrangements there is, in fact, a guarantee that if the elected president or major elected body of the parliament are not under the control of the conservatives, they would not be able to divert from the policies of the supreme leader (See: Moghissi and Rahnema2001).

the fundamentalists to regain control of the parliament. However, the reformists in the seventh parliament (2004–2008) proposed two conditions on CEDAW, that "international institutions should not have the right to violate Islamic laws and that international courts should not intervene in the internal affairs of Iran." The proposal was rejected by the parliament; even by the female representatives, after identifying seventy cases where CEDAW violated Islamic laws. The conservative female representatives argued that CEDAW was based on the Western definition of women's rights, which was not acceptable in the Iranian society. Some even claimed CEDAW created a more difficult economic situation for women since it would have banned polygamy. To conceptualize the contradiction between CEDAW and Islamic laws, the next chapter compares the articles of CEDAW to civil codes of the Islamic Republic of Iran, which claimed to be based on Islamic laws.

The political defeat of Khatami's reformist agenda led to public frustration and political apathy, which facilitated the conservative success in the presidential election of 2005.

The first term of the Presidency of Mahmoud Ahmadinejad (August 2005–August 2009)

Once Ahmadinejad won the election in August 2005, the fundamentalists held political power and they began pursing more legal actions that coincided with their traditional interpretation of Islamic laws. Although some women continued civil society efforts to promote women's rights, the government implemented several restrictive laws, many of which further restrained access to education.

Women's press and NGOs facilitated several demonstrations between 2004–2006 including: the Stop Stoning Forever Campaign; the Women's Access to Public Stadiums Campaign; the Mothers for Peace Campaign; and One Million Signatures Campaign to Change Discriminatory Laws. The 'One Million Signatures' campaign received international recognition as the most influential campaign against the discriminatory policies of the Iranian government (Tohidi 2009). On one hand, the campaign called for an end to discriminatory laws that would ultimately be submitted to the Parliament. On the other hand, the campaign wanted to become a dynamic, non-violent and non-ideological movement to enhance social awareness and sensitivity to women's issues. They wanted to increase awareness on the impact of discriminatory laws on the daily lives of women and men in Iran through face-to-face interaction, as well as through virtual space and new media (Ahmadi Khorasani 2009). Despite the peaceful nature of the campaign, many activists confronted state repression and were arrested for 'disruption of public opinion,' 'propagating against the regime,' and 'endangering of national security.'

In addition to restricting freedom of speech for women who participated in the 'One Million Signatures' campaign, the government continued to restrict speech and activities among civil society that began under Khatami's presidency. The government intensified how they filtered websites, shut down indepen-

dent newspapers and journals, closed various NGOs (including women's associations), and imprisoned several civil and women's activists (Sadeghi 2012: 126). In January 2008, Zanan, a magazine that served as a platform for secular women, reformist clerics, intellectuals, and jurists supporting women's issues since 1992, was shut down by the Ahmadinejad regime.

Throughout Ahmadinejad's first term as president, the government further implemented several measures that restricted women's access to education. Under Rafsanjani and Khatami, women benefited from educational opportunities provide by Iran, particularly how universities and workplaces encouraged women from both traditional and reformist families to study at the universities and take a job. According to a report by the parliament's research center, over a twenty year period, there was a twenty-three percent increase in the number of girls taking nationwide university entrance exams, with sixty-five percent of girls passing the test (Vakil 2011:112). However, the seventh parliament proposed a new quota system for the universities, and although it was never ratified, it was implemented with a low ratio in 2007. The enforcement of this plan intensified in 2012 when thirty-six universities in Iran excluded women from seventy-seven fields of study. In 2013, another fourteen fields were banned for women. Furthermore, the government created a 'region-based university application system' which required a woman to have permission from her father or husband to study at a university in another city (Koolaee 2012). The government also proposed new gender segregation measures in order to 'Islamize' the universities. The justification for such schemes was to protect men's opportunities in education and the labor market, in order to reduce the pressure of high unemployment during the economic crisis. These policies have been widely criticized as deliberate policy mechanisms to curb women's access to higher education.

In 2007, the seventh parliament introduced the 'Family Bill' which included articles that restricted women's status. Article 23 enabled a man to remarry without the permission of his first wife and restricted the conditions of polygamy only to the financial ability of the man. Article 25 created a tax to be imposed on women's dowries (*mahr*). Article 46 "criminalizes the marriage of a foreigner to an Iranian woman without proper authorization. The foreign man is subject to between ninety days and one year imprisonment, and the woman (if married at her free will), her father (if he gave permission), and the marriage officiate will be sentenced as accomplices."[13] However, a protest by several women activists (including those who participated in the One Million Signatures campaign) lobbied with religious authorities and representatives and caused the eighth parliament to ratify the Family Bill in 2013 without Articles 23 and 25. However, Article 46 remained with little change (Koolae 2012).

The Cultural Commission of the seventh Parliament further sought to revise Khatami's cultural policies that allowed for women to abide by a more relaxed

[13] Foundation for Iranian Studies, 2007 Family Protection Bill, available at: http://fis-iran.org/en/women/laws/07fpb (25 June 2015).

Islamic dress code. The Cultural Commission created the 'Social Security Plan' (*tarh-e amniyat-e ejtema'i*), a measure to pressure women to strictly follow a conservative definition of the Islamic dress codes and to arrest women who resist for being 'improperly-veiled.' They also initiated the 'Plan to Promote Public Chastity' which required all institutions to strictly enforce both women's dress codes as well as the rule against mingling of men and women in workplace, universities, and restaurants among many other public spaces. Women's working hours were also reduced, which was justified by claiming it would allow women to have more time with their families (Sadeghi 2012: 127; Koolae 2012). All of these policies restricted the presence and participation of women in public spaces.

The Women's Coalition 2009 presidential elections

Despite all of the government's efforts to restrain civil society and the rights of women, the Iranian people became more conscious of the issues. People from various strata, from both religious and secular backgrounds, were mobilized to vote for more reformist-oriented candidates to stop Ahmadinejad from continuing such restrictive policies in his second term. Different groups of women activists formed a coalition of Iranian women to challenge the conservative gender policies. The coalition entered into the debate pertaining to the tenth presidential election campaign with two specific demands; to make Iran a state-party to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and to eliminate the discriminatory laws against women, specifically through the revision of articles 19,[14] 20,[15] 21,[16] and 115[17] of the Constitution. These demands would unconditionally address the principle of gender equality in Iran.

[14] **Article 19**: "All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and color, race, language, and the like, do not bestow any privilege."

[15] **Article 20**: "All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria."

[16] **Article 21**: "The government must ensure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals:
1. create a favorable environment for the growth of woman's personality and the restoration of her rights, both the material and intellectual;
2. the protection of mothers, particularly during pregnancy and childbearing, and the protection of children without guardians;
3. establishing competent courts to protect and preserve the family;
4. the provision of special insurance for widows, and aged women and women without support;
5. the awarding of guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian."

[17] **Article 115**: "The President must be elected from among religious and political (male) personalities possessing the following qualifications: Iranian origin; Iranian nationality; administrative capacity and resourcefulness; a good past-record; trustworthiness and piety; convinced belief in the fundamental principles of the Islamic Republic of Iran and the official religion of the country."

The coalition aimed to raise awareness among the people and to familiarize them with the discriminatory nature of the laws in the Constitution of the Islamic Republic, as well as to familiarize the public with the principles of the CEDAW and the importance of the government accepting this convention. The coalition further wanted to use the presidential elections as a tool to challenge every candidate with his plan for gender equality, to influence the future government, and to apply pressure for the implementation for their demands as a part of civil society (Bakhshizadeh 2009).

All candidates except Ahmadinejad responded to the demands of the women's coalition by offering gender friendly policies. Mir Hossain Mousavi had already published his agenda for women a few days before the elections and included reforms in legal, economic, and sociopolitical rights for women (Sadeghi 2012: 123).

Second term of the Presidency of Ahmadinejad (August 2009–August 2013)

At the beginning of his second term, Ahmadnejad proposed three women to be ministers in his cabinet. However, parliament only approved one of the women, Marzieh Vahid-Dastjerdi, as the Minister of Health and Medical Education. Vahid-Dastjerdi was the first female minister in Iran since the revolution and only the third female minister in Iranian history (after Farrokhroo Parsa as Minister of Education from 1968–71 and Mahnaz Afkhami as Minister of Women's Affairs from 1976–1978). This appointment was considered to be Ahmadinejad's reaction to the debates on the government's discriminatory gender policies during the presidential election of 2009, despite the fact that he neglected the demands of the women's coalition. On the other hand, some viewed his choice of a female minister as a hypocrisy and a deceptive political show rather than a "genuine concern for the predicament of Iranian women" (Sadeghi, 2012: 125; Tohidi 2009).

After Ahmadinejad's re-election, often referred to as the 'electoral coup,' many activists left the country either forcefully or voluntarily. The government perpetuated systematic and violent political repression through brutal crackdowns of peaceful demonstrations, mass arrests, torture, show trials, rape and sexual abuse of political prisoners. The few organizations that survived Ahmadinejad's first term, including the Center for the Defense of Human Rights, were shut down. Even the 'One Million Signatures' campaign became much less active, as many of its members fled the county. As a result, activities from civil society drastically declined during the second term (Sadeghi 2012: 130; Tohidi 2009). The conservative discriminatory gender policies continued in Ahmadinejad's second term, as the eighth parliament ratified the 'Family Bill' and the gender quota system.

In August 2012, Supreme Leader Khamenei issued a decree to change Iran's family planning program. Khamenei criticized the program as an imitation of Western lifestyles and he regarded continuing the population control program

to be a mistake. He ordered officials to create a policy to encourage Iranians to marry young and to have more children, so Iran's population could grow to 200 million people. Accordingly, parliament revoked the population control program and it was replaced with 'fertility programs.' This resulted in cutting access to free or low price services for birth control, such as condoms, contraceptive pills or vasectomies. Another piece of legislation, the 'Comprehensive Population and Family Excellence Plan'[18] was proposed in parliament, which included articles about the conditions of women and new restrictions on the use of contraceptives. Women's groups and activists widely oppose these measures and issued a statement stating how "The Plan in Iran will only work to widen the country's gender divide in labor. It will also place new and additional restrictions on women's employment, particularly on unmarried women" (Amani and Anzia 2014). The legislation plan has been under discussion and has not been ratified.

The Presidency of Hasan Rouhani (August 2013–2017)

Rouhani won the 2013 election as a moderate, promising to advance women's rights and to reduce the government's interference in everyday life. Although there has not yet been any legislation changing the discriminatory laws against women, there has also not been significant progress in opening the political climate or much activity from civil society (Casagrande 2014). Women activists are still arrested and persecuted based on the laws passed under Ahmadinejad. The 2015 Annual Report of the United Nations for Human Rights[19] demonstrates the systematic discrimination against women in Iran, which has not been changed under Rouhani despite his calls for equal rights for women and men.

As the Supreme Leader, Khamenei emphasized 'gender equality' as the greatest intellectual mistake of the West. He argued that "If we want our view with respect to the issue of women to be healthy, logical and precise, we have to empty our minds of this talk that Westerners say about women, [such as] about employment, about management, about gender equality" (cited in Karami 2014). In Khamenei's view, some occupations are specifically male jobs. He questions, "Why should a job that is masculine be given to a woman? What pride is there

[18] "The 'Comprehensive Population and Family Excellence Plan,' is a proposed legislation in 50 articles aiming to encourage population growth in a departure from the current population control policies, which have been in effect for the past two decades. The plan's main goal is to 'increase the pregnancy rate to 2.5% of the quantitative population growth until the year 2025, simultaneous with qualitative improvement of the population and its stabilization by the year 2051'" (650 Activists Say New Population and Family Plan Would Stifle Women, *International Campaign for Human Rights in Iran*, available at: http://www.iranhumanrights.org/2014/01/women-population/ (06.05.2015).

[19] Report of the Secretary-General, Situation of human rights in the Islamic Republic of Iran, Human Rights Council, A/HRC/28/26, 20 February 2015, http://blog.unwatch.org/wp-content/uploads/A_HRC_28_26_ENG.pdf (20 June 2015).

in this for [a] woman to do a job that is masculine? I'm disappointed that sometimes women themselves show sensitivity on this issue, that what difference is there between us and men?" According to his argument, in Islamic thought the issue is a matter of seeing "the shapes are two shapes. One shape is for one job and one shape is for another job" (ibid.). In Khamenei's opinion, women should manage domestic work and he claims "If someone wants to discuss the issue of women separate from the issue of the home, they are entangled in a contradiction of understanding. These two have to be seen together, despite it being two issues." He further explains how women provide a source of peace at home, "the source of peace for the man, and the source of peace for the children. If the woman herself does not have mental and spiritual peace, she cannot give this peace to the family. A woman who is humiliated, who is insulted, who has pressure of work, cannot be a housewife, cannot be the manager of the house" (ibid.).

Although Rouhani has not taken significant action on the issue, he has taken a contradictory position to the Supreme Leader. Rouhani said, "This talk is true that the home is the foundation for society and reform begins in the home, but if we ignore half of the population of the country, we will not see real development and growth in that country" (ibid.). He ennobles the valuable steps women have taken to achieve presence in the various field of culture, science, employment, schooling and work. He also refers to the Islamic view of men and women and says, "Those who are scared of women's presence and excellence, or have other views, to please not attribute these wrong views toward religion, Islam, and the Quran" (cited in Karami 2014).

Conclusion

This chapter presented a brief overview of the history of women's rights in Iran, from the establishment of the Constitution when women were deprived of socio-political rights, to the era of Reza Shah who modernized the country by banning Muslim women from wearing the veil. This summary further covered the reign of Mohammad Reza Shah, when women fought for their suffrage but were ultimately defeat by the clergy, followed by the Shah ultimately granting women's suffrage and granting rights via a regal decree.

In this historical course, the era of Mohammad Reza Shah seems to be the most productive epoch for women's rights attainments. However, awarding such rights to women was part of his policy of Westernization and modernization, rather than out of a belief in the necessity of gender equality.[20] On the one hand,

[20] Mohammad Reza Shah explains his view on women in an interview with Italian journalist, Oriana Fallaci in October of 1973: "In a man's life, women count only if they're beautiful and graceful and know how to stay feminine and… This Women's Lib business, for instance. What do these feminists want? What do you want? Equality, you say? Indeed! I don't want to seem rude, but… You may be equal in the eyes of the law, but not, I beg your pardon for saying so, in abil-

he saw the clergy's power as an obstacle for his policy of Westernization; though on the other, the characteristics of monarchy prevented him from empowering civil society and independent political organizations in order to restrict the power of the clerical community. However, defining some women's rights beyond the religious framework through monarchical command can be considered as an effort to restrict the power and influence of the clergy. Therefore, he aimed at the modernization of the country, though without modernization's requirements. By using non-modernized methods and procedure like monarchical command, however,, his policy of modernization could not deeply embed in society, rather, it remained superficial.

To have a better understanding of the social tensions and instability and also gain a historical overview of women's rights in the era of post-revolution, it is important to clarify the Iranian political structure. Although the political system is a republic and the government consists of three independent branches (Legislative, Executive, Judiciary), the system in Iran is different from other political republic structures. Another essential organization collaborating within the Iranian political structure is the Iran Guardian Council. All powers and sub-organizations function under the supervision of the Supreme Leader. The President and the representatives of parliament are elected by the direct vote of the people. However, the Guardian Council – a 12-member body half of which is directly appointed by the supreme leader – vets the qualification of candidates for presidency and the parliament. Even after election, the President needs to be appointed by the Supreme Leader. The Guardian Council also has vetoing power over the legislation passed by the parliament in order to ensure that legislation is in accordance with Islam. On the other side, the head of judiciary power is appointed also by the Supreme Leader; therefore, the Supreme Leader holds the ultimate authority over all powers; even the people's vote in election is under his control. The Supreme Leader follows a conservative policy in conformity with a fundamentalist interpretation of Islam.

Accordingly, all arrangements of political structure are aimed at maintaining the power and ultimate authority of conservative policy. Nonetheless, the historical overview shows that when the reformist policy based on a reformist interpretation of Islam gained the opportunity to play a confined role in the mechanism of the political power system, civil society became more active and the political climate was relatively open for criticizing the dominant policy and debating alternative policies. Hence, women activists as participants of civil soci-

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ity… No. You've never produced a Michelangelo or a Bach. You've never even produced a great cook. And don't talk of opportunities. Are you joking? Have you lacked the opportunity to give history a great cook? You have produced nothing great, nothing! … All I can say is that women, when they are in power, are much harsher than men. Much more cruel. Much more blood thirsty. I'm quoting facts, not opinions. You're heartless when you're rulers…" available at: http://www.newrepublic.com/article/world/92745/shah-iran-mohammad-reza-pahlevi-oriana-fallaci (8 June 2015).

ety found a space for their demands for gender equality. The reformist government, relying on the reformist interpretation of Islam, amended a few parts of the discriminatory laws in order to provide equal opportunities for all citizens of society. The conservative government deprives women of their primary and human rights and forces them to return to the domestic sphere and leave the public sphere to the men. This leads to the question of what distinguishes the reformist interpretation of Islam from the fundamentalist and also secular interpretations, particularly regarding their views on women's rights; and also, what restrictions does each interpretation have in defining human and women's rights? In the following chapters this thesis discusses the three main interpretations of Islam and their perspectives on women's rights and gender equality, utilzing a sociological theoretical analysis.

4.2 The Emergence of CEDAW as a Global Norm of Gender Justice

Human rights have been asserted in many documents throughout the history of human rights struggles, including; the Magna Carta (1215), the English Bill of Rights (1689), the United States Declaration of Independence (1776), The Constitution of the United States of America (1787), the French Declaration of the Rights of Man and the Citizen (1789), and the Bill of Rights of the US Constitution (1791). However, the enforcements of some of these documents have excluded certain groups, such as women, people of color, or certain religious minorities. Hence, the various groups often excluded from these declarations of human rights struggled for their rights, which were ultimately incorporated by worldwide efforts in the twentieth century to advance human rights internationally.

The League of Nations

The origins of international women's human rights can be traced to the establishment of the League of Nations in the aftermath of World War I in 1919, which aimed to 'promote international cooperation and to achieve international peace and security.' The League of Nations further aimed to ensure the self-determination of peoples, and to prevent the occurrence of another world war through binding its members to international law and treaty obligations (Ishay 2008: 206–207). Furthermore, it promoted human rights in terms of fair and human treatment in labor, just treatment of natives in colonial territories, and it prohibited trafficking of women and children (Sterns 2012: 16). The issue of women's status was on the League's agenda in 1935 and was set to be inquired into by a Committee of Experts in 1937 (Chinkin & Freeman 2012:

3). However, these negotiations and all others initiated by the League did not receive political backing from member states, due to the outbreak of World War II. The League of Nations did not recover from this lack of international support, which ultimately led to the failure of the League's efforts (Norman and Zaidi 2008: 64–65).

Another essential event concerning the human rights of women (albeit on the regional level) was the Inter-American Commission of Women by the Sixth International Conference of American States in 1928. This conference was responsible for the 1933 Montevideo Convention on the Nationality of Married Women, which was later incorporated into Article 9 of CEDAW (Chinkin and Freeman 2012: 4).

The UN Convention

After the failure of the League of Nations, the major international powers met in San Francisco and established the Charter of the United Nations on October 24, 1945. The Convention aimed to preserve international peace and was recognized as "the first document in history that defines the protection of human rights as a legitimate international task" (Zwingel 2005: 77). The UN Convention was also the first international agreement to directly mention discrimination based on sex, specifying the equal rights of men and women and the fundamental rights of individuals, and the dignity and value of human beings in the preamble. Furthermore, Article 1 (paragraph 3) explains that one of the purposes of the UN is to promote and encourage respect for human rights and for fundamental freedoms for all without the distinction of sex, race, language, or religion.

The formation of the Commission on the Status of Women (CSW)

The Economic and Social Council (ECOSOC), one of the six main organs of the United Nations established by the UN Charter in 1946, is primarily tasked with conducting research and taking measures to promote human rights and basic freedoms. ECOSOC is the UN's central platform and principal body "for coordination, policy review, policy dialogue and recommendation on economic, social and environmental issues, as well as for implementation of the internationally agreed development goals."[21] Various subsidiary bodies and committees were established by ECOSOC, including the Commission on Human Rights

[21] The United Nations' central platform for reflection, debate, and innovative thinking on sustainable development, The Economic and Social Council (ECOSOC). Available at: http://www.un-.org/en/ecosoc/about/index.shtml (21 June 2015).

(CHR)[22]which was created to develop "the human rights standard setting and codification" (Zwingel 2005: 77). ECOSOC also set up a Commission as a subunit of the CHR with the task of analyzing the political status of women. At its first meeting in 1946, the sub-committee arranged its principles and concrete tasks, including the creation of a worldwide survey of laws on women and organizing a women's conference. However, after the sub-committee did not receive full support from the CHR, they protested to the Human Rights Commission and demanded an independent commission under ECOSOC, which led to

[22] Under the leadership of Eleanor Roosevelt, the Commission on Human Rights (CHR), composed of representatives from various political, cultural and religious backgrounds, took a series of actions. The Commission, with members representing different – even opposing – cultural backgrounds and philosophies, tried to overcome obstacles resulting from divergent cultures and deeply rooted ideological divisions. The outcome was a document based on 'value generalization' (Joas 2013) resulted from the reconcilement of fundamentally different cultural traditions. Accordingly, the Universal Declaration of Human Rights was ratified on 10 December 1948.

The UDHR contains basic human rights ideals that emerged during the last centuries through the Enlightenment and the industrial revolution. Various personal rights such as those related to individual life, liberty and personal security, as well as equality before the law are mentioned in the first nineteen articles of the declaration. Articles 20–26 captured rights related to public and political participation and social and economic equity, such as social security, the right to work, the right to just remuneration, the freedom to join trade unions, limitation of working hours, periodic holidays with pay, and the right of education. Cultural rights and rights associated with communal and national solidarity are referred to in Articles 27–28. And finally the last two articles, 29 and 30, underlined the conditions in which the rights of individuals in society and the state could be realized.

It should be noted that a declaration differs from a convention or a treaty. Declarations are not legally binding, while conventions are legally binding instruments concluded under international law. The UDHR was developed as a declaration, an ideal standard with high moral and political significance, yet was not a legally binding force in international law. It was only eighteen years later in 1966 that international human rights law, in two separate conventions, was created, entering into force in 1976: the International Covenant on Civil and Political Rights (ICCPR) which focuses on issues such as the right to life, freedom of speech, religion and voting; and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which focuses on food, education, health and shelter. Both covenants, together with the Universal Declaration of Human Rights, formed the International Bill of Human Rights. With these conventions, human rights were no longer restricted by domestic jurisdictions claimed by states. Both the ICCPR and ICESCR affirm the rights to self-determination (Article 1) and prohibition of any form of discrimination on grounds of race, color, sex, language, religion, or political or other opinion (Article 2), thereby provide fundamental prerequisites for the realization of other human rights (Ishay 2008: 16–18, 223). In addition to these covenants in the International Bill of Human Rights, many conventions have been adopted by the United Nations to protect the rights of a specific group of oppressed persons including the European Convention on Human Rights (1952), the Convention Relating to the Status of Refugees (1954), the Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965/1969), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979/1981), the Convention on the Rights of the Child (CRC, 1989/1990), and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, 1990/ 2003), etc.

the establishment of the Commission on the Status of Women (CSW) in 1947. Their responsibilities included:

> Preparing recommendations and reports for the Economic and Social Council with a view to advancing women's rights in the fields of politics, business, social life and education, and to treat problems in the sphere of women's rights urgently which call for immediate attention in order to assert the principle that men and women have equal rights, to prepare proposals to this end and to issue relevant recommendations (ECOSOC Resolution 48(IV) of March 29, 1947, cited in Gaudart 2007: 13).

The Commission played an essential role in ensuring that the phrase 'equal rights of men and women' from the preamble of the UN Charter was retained in the Universal Declaration of Human Rights (UDHR). The Commission also facilitated several conferences between 1949 and 1959, including the Convention on the Political Rights of Women (1952), the Convention on the Nationality of Married Women (1957), and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962). Throughout the 1960s, the CSW gave more attention to family planning and its relationship to the status of women. A report prepared for ECOSOC about this relationship concluded; "family planning offers obvious benefits to women as individuals, especially with regard to their health, education or employment and their roles in family and public life." Furthermore, concerning the status of women, particularly their education, employment and position in the family and community, it has a "a marked, and even decisive, influence on both family size and on the success of family planning programs" (UN Doc. E/CN.6/575/Rev.1:109f cited in Zwingel 2005: 86).

Declaration on the Elimination of Discrimination Against Women (DEDAW)

Despite the fact that the UN Charter and the UDHR recognized the status of women and promoted the rights of women and non-discrimination based on sex, the commission was convinced that a universal document was required to fully protect and promote women's rights, since the "existing international human rights laws were not effectively addressing the specific disadvantages and injustices faced by women" (Hoq 2001: 680). Most of the disadvantages faced by women were not yet recognized as violations of human rights, but they were regarded as 'cultural and traditional patterns' (Zwingel 2005: 90). In fact, general human concerns were restricted to men's concerns, neglecting those of women,

> because men are generally not the victims of sex discrimination, domestic violence, or sexual degradation and violence… these matters are often relegated to a specialized and marginalized sphere and are regulated, if at all, by weaker methods. Unless the experiences of women contribute directly to the mainstream international legal order, … inter-

national human rights law loses its claim to universal applicability (Charlesworth 1995: 105, cited in Zwingel 2005: 92).

However, human rights law was not able to address all violations of women's rights as it was confined to the public sphere and many violations occur in private and in the family, where "the perpetrator and the victim interact in the intimate sphere of a family" (Schöpp-Schilling 2007: 7). Therefore, issues such as 'honor killing' and the various forms of physical and mental violence committed against women in the family are outside the scope of human rights laws. Accordingly, a gender-specific instrument was required that would provide the greatest potential to ensure substantive gender equality for women, in both the private and public domains (Hellum and Aasen 2013: 2).

The first step in creating a convention of this type was the adoption of the non-binding Declaration on the Elimination of Discrimination Against Women (DEDAW) in 1967. CSW drafted the document that contained a preamble and eleven articles.

International Women's Year and adopting the Convention on the Elimination of Discrimination Against Women (CEDAW)

To draw world public attention to women's issues, the UN declared the year 1975 to be International Women's Year. The First World Conference on Women took place in Mexico that same year, where delegations adopted the World Plan of Action for the implementation of the objectives of the International Women's Year. Conferences to promote the advancement of women continued over the next few decades in Copenhagen (1980), Nairobi (1985), and Beijing (1995). This caused the UN to declare the subsequent ten years the 'Decade for Women' with a thematic focus on equality, development and peace. As Zwingel explains, "the Decade for Women, including the World Women's conferences, increased the knowledge on gender in intercultural comparison as well as the publicity of gender issues and triggered institutionalization of the UN's gender policies in a variety of ways" (Zwingel 2005: 89). The most important effect of the Decade for Women was the process of moving from the non-binding DEDAW to adopting a legally binding convention on women's rights.

Ultimately, the Convention on the Elimination of Discrimination Against Women (CEDAW) was adopted on December 18, 1979 after a long process of complicated and highly controversial negotiations, with thirty votes in favor, none against, and ten abstentions. During the Conference at Copenhagen in 1980, sixty-four states signed CEDAW and two states even submitted their instruments of ratification. It entered into force on September 3, 1981, after being ratified by twenty member states. According to the terms of the agreement, state parties report to the CEDAW Committee every four years regarding their progress in implementing and enforcing CEDAW. Shadow reports provided by non-govern-

mental organizations (NGOs) provide the CEDAW Committee additional information in evaluating progress in the official reports.

Currently, 189 states are parties to the convention and only six UN member states have not yet ratified or acceded to the Convention.[23] These states include Iran, Somalia, Sudan, Tonga, Palau (signed on September 20, 2011) and the United States of America (signed on 17 July 1980). Ratification or accession by many states does not, however, mean the "ban of discrimination against women on the grounds of sex and marital status or with the demand for equality, equal treatment and equal status of women and men." Some states have applied the right of reservations (Article 28, para. 1 and 2)[24] and have not accepted all articles of CEDAW, justifying the incompatibility of those articles to their political, legal and religious arrangements. However, in practice, "many reservations run counter to the objective and purpose of the relevant articles" (Schöpp- Schilling 2007: 8).

Optional protocol

To strengthen CEDAW, an Optional Protocol was adopted on November 6, 1999 by the UN General Assembly as an additional CEDAW complaints procedure. The Optional Protocol entered into force on December 22, 2000. It must be ratified separately from CEDAW, which commits the states to recognize the competency of the CEDAW Committee to receive and consider complaints from individuals or groups within its jurisdiction. The Committee is also permitted to conduct special, country-specific inquiries into alleged violations.

The Optional Protocol to CEDAW is recognized as an effective enforcement of women's human rights that enhances existing mechanisms for the implementation of human rights within the UN system. It placed CEDAW on equal footing with human rights treaties that have complaints procedures, such as the International Covenant on Civil and Political Rights, the Convention on the

[23] 'Accession' is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question (Glossary of terms relating to Treaty actions: Accession, United Nations Treaty Collection. Available at: http://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml (13 May 2015).

[24] **Article 28**: 1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession. 2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

Elimination of All Forms of Racial Discrimination, and the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.[25] The Optional Protocol further diffused knowledge of CEDAW and women's rights throughout states and amongst individuals and it aimed to increase public awareness of women's human rights (Tertinegg 2007: 21).

Structure of the CEDAW

The Convention consists of a preamble and thirty articles. The preamble argues that, despite the existing international human rights instruments, extensive discrimination continues to exist; hence there is a need to go beyond current measures to require states to undertake specific measures to achieve equality of men and women. It also emphasizes the importance of women's contribution to the welfare of families and society, which requires evolving traditional gender roles for men and women in both society and in the family. Concerning the upbringing of children, women's capacity to bear children must not lead to discrimination, because "the upbringing of children requires a sharing of responsibility between men and women and society as a whole" (CEDAW Preamble).

The articles of CEDAW are categorized in six parts. Part One (Articles 1–6) addresses the general purposes of the Convention and state parties' obligations. It starts with the definition of discrimination in Article 1, which is not restricted to sex-based discrimination and also prohibits discrimination against women, 'irrespective of their marital status' which prevents them from enjoying their 'human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'. Therefore, as Chinkin and Freeman explain, "CEDAW is not gender-neutral but addresses explicitly the need to eliminate discrimination against women" (Chinkin and Freeman 2012: 9). The next five articles contain states' obligations to empower women and to promote cultural change in order to reach equality between men and women.

Article 2 outlines specific areas of discrimination against women and Article 3 underlines state obligations, including legislation to ensure the full development and advancement of women. Article 4 refers to temporary special measures that should be taken by states for positive discrimination for women. Article 5 addresses states' measures to modify social and cultural patterns based on 'prejudice, customary and traditional practices, sex-role stereotypes and the alleged inferiority or superiority of either of the sexes' (Schöp-Schilling 2004), and also recognizes common responsibilities of men and women in the family for the upbringing and development of children. Article 6 obliges states to take

[25] Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. 2000. United Nations Entity for Gender Equality and the Empowerment of Women. Available at: http://www.un.org/womenwatch/daw/cedaw/protocol/ (21 June 2015).

measures, including legislation, to suppress trafficking in women and exploitation through prostitution.

Part two (Articles 7–9) address the political and public rights of women that parties are obliged to ensure on the national and international levels. These rights include the right to vote, the right to be elected to government positions, and the right to participate in the government's decision making (Art.7). On the international level, rights such as representing a government and participating in the work of international organizations (Art.8) is outlined, while the right of 'acquisition and retention of nationality and the transmission of nationality to children' is referred in Article 9.

The third part (Articles 10–14) refers to the social and economic rights of women. These include the equal rights: to education (Art. 10), to employment (Art. 11), to health care (Art. 12), to access to financial benefits within the family and all forms of financial credit, as well as participation in sports and all aspects of cultural life (Art.13); and also pays attention to the special needs of women in the rural sector (Art.14).

Part four (Articles 15–16) confer the civil laws, so that Article 15 deals with equality for men and women before the law, including those concerning concluding contracts and administering property, and also the freedom to choose a place of residence and domicile, as well as equality in legal proceedings. Article 16 calls for equality in marriage and family relations such as the equal right to choose a spouse and to enter into marriage; the same rights and responsibilities during marriage and at its dissolution; decisions about the number of children and their care; equal right to the property gained in the family; the prohibition of child marriage and setting a minimum age for marriage, and also mandatory registration of marriages in an official registry.

The fifth part (Articles 17–22) sets the implementation of the Convention through the monitoring mechanism of the CEDAW Committee. The procedure of establishment of an independent monitoring Committee is explained in Article 17. Article 18 illustrates the procedure of report by states parties on various measures which they have taken to accomplish the Convention's purpose in their countries. The Committee has the right to determine its own rules of procedure according to Article 19. Article 20 explains the process and period of the Committee's meeting. Article 21 obligates the Committee to report to the General Assembly of the United Nations though ECOSOC to make suggestions and general recommendations to the participating states. Article 22 depicts the role of specialized agencies in the reporting process.

The sixth part (Articles 23–30) deals with various concluding provisions and modes of ratification and entry into force. Article 23 says "nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women". Article 24 emphasizes all necessary measures at national level which should be undertaken by states parties to achieve full realization of the rights recognized in the convention. Articles 25–27 explain technical conditions such as becoming bound by the Convention, re-

questing a revision of the present Convention (Art. 26), and the procedure of entering into force. Impermissible reservations and their conditions are explained in Article 28. The resolution of disputes concerning the interpretation or application of the Convention and the possibility of referral of a dispute to the International Court of Justice is illustrated in Article 29, and ultimately, Article 30 recognizes the authenticity of the text in all languages of the UN (Zwingel 2005, Chinkin and Freeman 2012).

4.3 Women's Rights in the Current Laws of the Islamic Republic of Iran in Comparison with CEDAW

Iran is one of the United Nations members that have not yet ratified the Convention on the Elimination of All Forms of Discrimination Against Women. Although Khatami's reformist government passed a bill in favor of joining CEDAW that was ratified in parliament in 2003, the Guardian Council rejected this decision, arguing that CEDAW was incompatible with Islam.

This section will compare CEDAW with discriminatory statutes in the current laws of the Islamic Republic of Iran in order to recognize the disputes of CEDAW with Iranian laws that claim to be based on Islamic laws.

Laws in the legal system of the Islamic Republic of Iran (IRI) incorporate several types of provisions. The most important provision is in the Constitution, which determines the general framework of the political and social systems of the county. The Civil Code is another main provision of the legal system, which consists of statutes and laws that deal with civic and social relations between individuals and various circumstances of their lives.[26] Another important provision of the legal system is the Penal Code, which covers all punishments and offences defined in the laws. This section provides a review of women's rights in the Iranian legal system in comparison with CEDAW.

Women in the Constitution

Women and their position in society are of the utmost importance for the Islamic government in Iran, so much so that their position is addressed in the preamble of the Constitution: *because of great oppression women suffered under the old regime [Pahlavi's regime], they should benefit from a great restoration of their rights*. The Constitution states that it is the duty of the Islamic government to provide the necessary facilities to strengthen the basis of the family as the

[26] Encyclopedia Iranica.Civil Code (qānūn-e madanī) of Persia. Available at: http://www.iranicaonline.org/articles/civil-code (20 May 2015).

fundamental unit of society and the primary basis for the development of society. Accordingly, it emphasizes that women who are meant to take on the valuable and momentous task of motherhood are released from being regarded as an object or instrument in the service of promoting consumerism and exploitation.[27]

While the preamble and Article 1 of CEDAW draws attention to the definition of discrimination and the point that 'the role of women in procreation should not be a basis for discrimination', the preamble of the Constitution of Iran aims to recognize motherhood and the rearing of children as the main task for women, which affects the other roles of women in society.

Article 19 of the IRI Constitution defines rights by recognizing equal rights for all people of Iran regardless of their ethnicity, color, race, and language – but not gender.[28] Therefore, equal rights for men and women are not recognized by the Constitution.

Article 4 of the IRI Constitution states: *all civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria.* Islam is the sole source of legislation, which has serious implications for women's rights. Article 20 of the IRI Constitution states that both men and women equally enjoy the protection of the law, as well as all human, political, economic, social, and cultural rights. However, this article does not recognize unconditional equal protection, but rather it conditions this protection of equal rights to be in conformity with Islamic criteria. In the following section, the comparison of the various provisions and laws of Iran to the articles of CEDAW illustrates the unequal rights for men and women based on Islamic criteria.

Article 21 of the IRI Constitution explains the government's obligations concerning women's rights in all respects, which are conditioned to be in conformity with Islamic criteria and implies unequal rights for men and women in policies, programs, and legislations undertaken by the government. This article lists specific goals that government must implement related to women's rights:

"*1. create a favorable environment for the growth of woman's personality and the restoration of her rights, both the material and intellectual;*
2. the protection of mothers, particularly during pregnancy and childbearing, and the protection of children without guardians;
3. establishing competent courts to protect and preserve the family;
4. the provision of special insurance for widows, and aged women and women without support;
5. the awarding of guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian."

[27] Preamble of the Constitution of the Islamic Republic of Iran.University of Nevada, Las Vegas. Available at: https://faculty.unlv.edu/pwerth/Const-Iran%28abridge%29.pdf (26 June 2015).

[28] Article 19 of the Constitution: "All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and color, race, language, and the like, do not bestow any privilege."

It is obvious that all of these objectives, considered by the Constitution for the improvement of women's rights, are restricted to family and do not include any improvement for women's political, social, economic, or cultural rights. This depicts the priority of the role of women in the family rather in the public sphere in the Constitution; compare Article 3 of CEDAW, which obliges states to take appropriate measures in *all* fields, particularly in terms of political, social, economic and cultural rights to ensure the full development of women in order to ensure enjoyment of human rights and fundamental freedoms.

Accordingly, the Constitution of the IRI as a main representation of the political and social system of the country does not recognize equal rights for all citizens including men and women, but rather is based on a discriminatory perspective on women's issues.

Women's rights in family law

Minimum age for marriage

Though the amended law in 2002 increased the minimum age of marriage from 9 to 13 years of age for girls and from 15 to 18 for boys, children can be married off by their father or paternal grandfather before the legal age for marriage (Kar 2008). According to Article 1041 of the IRI Civil Code, *Marriage of girls before reaching the age of 13 full solar years and boys before reaching the age of 15 full solar years is subject to the permission of the Guardian and on condition of taking the child's best interest into consideration and approval of the relevant court*. This article is in contrast to Article 16 of CEDAW which prohibits the child marriage.

Choice of spouse and permission of father

According to Article 1070 of the Civil Code, the consent of both marrying parties to the marriage is the fundamental condition for the legality of the marriage. However, there are several limitations on the rights of a woman in this regard. To choose a spouse and enter into marriage, a woman who has not married previously requires the permission of her father or her paternal grandfather, even if she has reached the full age of majority. According to Article 1043, *if, however, the father or the paternal grandfather withhold the permission without justifiable reason, the girl can refer to the Special Civil Court giving full particulars of the man whom she wants to marry and also the terms of the marriage and the dowry money agreed upon, and notify her father or her paternal grandfather through that Court of the foregoing particulars. The Court can issue a permission for marriage fifteen days after the date of notification to the guardian if no response has been received from the guardian to satisfy refusal*. Women are also not allowed to marry non-Muslims or foreign nationals without special permission of the government, according to Articles 1059 and 1061 of the Civil Code,

respectively (Nayyeri 2013). As a result, the freedom of choice of spouse and entering into marriage as stipulated in Article 16 (a, b) of CEDAW are not recognized in the Civil Code of Iran.

Mahr (dowry)

Dowry is *anything which can be called property and which can be owned and possessed as a marriage portion* (Art. 1078 of the IRI Civil Code), which is fixed *upon the mutual consent of the marrying parties* (Art. 1080) by starting the marriage. Article 1082 of the Civil Code recognizes the wife as the '*owner of the marriage portion*' immediately after the performance of the marriage ceremony and gives her the authority to '*dispose of it in any way and manner that she may like*'. The wife has the right to refuse starting sexual relations with her husband until he pays the entirety of the dowry, stipulated by Article 1085 of the Civil Code.[29] Regardless, in actual social practices, women only receive the marriage portion if the husband divorces her, rather than at the time of marriage.[30] After an amended act in 1997 due to hyper-inflation in Iran, a woman's dowry, if agreed in cash, should be recalculated to take account of inflation, and *it shall be paid in accordance with the change of the annual price index at the time of payment in comparison with the time of the contract, which shall be calculated by the Central Bank of Iran, unless otherwise agreed by the spouses at the time of contract…*(Kar 2008; Nayyeri 2013). A dowry is considered as an economic right, legally provided for women.

Relations between husband and wife

Entering into the marriage establishes certain rights and reciprocal duties between husband and wife (Art. 1102 of the Civil Code). They are 'bound to establish friendly relations' and 'must cooperate with each other for the welfare of their family and the education of children', as Articles 1103 and 1104 stipulate. Nonetheless, Article 1105 of the Civil Code recognizes 'the position of the head of the family' as 'the exclusive right of the husband'. The cost of *nafaqah* (maintenance) of the wife, according to Article 1106, is at the discretion of the husband in permanent marriages. Maintenance, according to Article 1107, includes *all reasonable and appropriate needs of the wife such as dwelling, clothing, food, furniture, the cost of health and remedy, and a servant if the wife is accustomed to have servants or if she needs one because of illness or defects of*

[29] "As long as the *mahr* is not paid to her, the wife can refuse to fulfill her duties toward her husband, provided that the *mahr* is prompt. This refusal does not debar her from the right to nafaqah (maintenance)."

[30] According to Article 1092, "if the husband divorces his wife before the consummation of marriage, the wife be entitled to half of the marriage portion."

limbs."[31] Though, as Article 1108 clarifies: *if the wife refuses to fulfill the duties of a wife without legitimate excuse, she will not be entitled to the cost of maintenance.* Duties of the wife include *tamkin* (sexual submission and obedience), meaning that a woman is obliged to meet her husband's sexual desires at all times. A woman's refusal to fulfill her husband's sexual needs is known as *nushuz* (disobedience), which leads to the suspension of her right of maintenance. Therefore, there is no space for women's psychological needs and preparedness in the sexual relation between wife and husband, which may result in marital rape (Kar 2008).

Article 5 of CEDAW calls for the modification of the social and cultural patterns of the conduct of men and women based on an assumed inferiority or superiority of either sex, or on stereotyped roles for men and women. However, the Civil Code of the IRI legally determines the head of the family; defines the role of breadwinner and posits the duty of wives towards their husbands, which follows and strengthens stereotyped roles for men and women.

Right to work

The right to work is considered an economic right, although as it is restricted to married women only, it must be regarded as falling within family relations. The husband can, according to Article 1117, *prevent his wife from occupation or technical work which is incompatible with the family interest or the dignity of himself or his wife*. However, the article does not offer any definition of 'family interest.' This ambiguity causes personal interpretations of 'family interest' to restrict women's presence in the professional domain. However, Article 18 of the IRI's Family Protection Law gives the same right to the wife: *the wife can also request a similar matter from the court. If doing so does not cause interruptions in the livelihood of the family, the court will prevent the husband from continuing at the job*.[32] The husband's interpretation of 'family interest' or incompatibility does not need to be approved by a court in contrast to the women's request. Accordingly, women's right to work is not considered 'as an inalienable right of all human beings' as conferred in Article 11 of CEDAW.

Right to movement and freedom to choose residence

A married woman cannot leave the country without her husband's approval. Article 18 of the IRI Passport Law stipulates that she needs her husband's consent to obtain a passport to travel outside the country. Furthermore, according to Ar-

[31] The cost of health and remedy was added to the Article in 2002 (Nayyeri 2013).

[32] Qanun-e Hemayat az Khanevadeh (The Family Protection Law of the Islamic Republic of Iran). Islamic Parliament Research Center. Available at: http://rc.majlis.ir/fa/law/show/97187 (18.05.2015).

ticle 19 of the same law, a man has right to impose a travel ban on his wife and request that her passport be seized.[33]

Articles 1005 and 1114 of the Civil Code provide men with the exclusive right to determine the place of a wife's residence: *the wife must stay in the dwelling that the husband allots for her unless such a right is reserved to the wife*. A wife who leaves her husband's home against his will is considered disobedient (*nashezeh*), and hence, disqualified for maintenance rights. According to Article 1115, *If the existence of the wife and husband in the same house involves the risk of bodily or financial injury or that to the dignity of the wife, she can choose a separate dwelling*; though, in these cases, the wife is required to prove to the court that she 'faces a significant risk of bodily harm, threatening her life and personal safety.' Therefore, the same right for men and women to movement and also to choose their residence and domicile, as mentioned in Article 15 (4) of CEDAW, are denied in the Civil Code of the IRI.

Polygamy

Men have the religious and legal right to have up to four permanent marriages at a time. Although this right is not explicitly stipulated in the Civil Code, it is referred in other articles such as the article on the law of inheritance. Also, articles 1075–1076 of the Civil Code recognize temporary marriage.[34]

In the Family Protection Act of 1968 and 1975, polygamy was restricted through having to obtain permission from a court of law. According to Article 16 of the Family Protection Act, a man was allowed to marry a second wife only under specific circumstances, as following: consent of first wife; inability of first wife to perform marital duties, failure of the first wife to be obedient to the husband; affliction of the wife to insanity or other difficult to cure disease; conviction of the wife; addiction of the wife to harmful substances; wife's abandonment of family life; wife's infertility; and disappearance of the wife.

Article 17 explains the procedure of second marriage in the following way:

> *The applicant must present two copies of the application to the court and explain his reasons. A copy of the application shall be sent to his wife. The court shall give the permission only when it has taken the necessary steps, and, if possible, has made an inquiry from the present wife of the man, in order to assure the financial ability of the man and*

[33] Qanun-e Gozarnameh (The Passport Law). Available at: http://rc.majlis.ir/fa/law/show/96904 (cited in): Impact Iran. 2012. IRAN: Gender Discrimination at its Worst. Women Living Under Muslim Laws (Wluml);For The Un Universal Periodic Review Of Iran, 20th Session Of The UPR Working Group. Available at: http://impactiran.org/wp-content/uploads/Women-Living-Under-Muslim-Laws_Irans-UPR_second-cycle.pdf, (21 June 2015).

[34] Article 1075: Marriage is called 'temporary' when it is for a limited period of time. Article 1076: The duration of the temporary marriage must be definitely determined.

doing justice in the case of article 16(1). It is however the first wife's right in all cases to apply for divorce if she wishes.

This article also defines a punishment term of six months to one year of imprisonment for a man who violates this rule, as well as for the Registry Officer and the new wife if she is aware of the former marriage of the man.

Though the Family Protection Law after the 1979 revolution was repealed, this article is still valid with a small change to the punishment of parties to the further marriage and the Registry Officer mentioned in Article 17, which is recognized as being against *Shari'a*. Nonetheless, polygamy denies the equality of men and women in marriage and family relations which are stipulated in Article 16 of CEDAW.

Punishment for adultery

Sexual intercourse outside of marriage is defined as the crime of *zina.* The punishment for *zina* committed by an unmarried person (*zena-ye-qeyre-mohsaneh*) is one hundred lashes, and for a married person (*zena-ye-mohsaneh*), it is stoning to death (Art. 225 of the new Islamic Penal Code). The punishment of stoning is applicable for men and women; however, it is applied in a greater proportion to women. Men can evade the conviction of adultery by claiming that they engaged in the relation through a temporary marriage, which permits sexual intercourse with multiple wives outside a formal marriage; women are not afforded this option under the Iranian Civil Code (Nayyeri 2013).

Inheritance

Article 907 of the Civil Code determines the inheritance for daughters and sons from their parent: *If the deceased leaves no parents, but has one or more children … If there are several children, some being boy(s) and some girl(s), each son takes twice as much as each daughter.*

According to Article 913,[35] the wife will only receive a quarter of the assets of the deceased spouse, if there are no children; if there are children, her portion is reduced to one-eighth. According to Article 946 of the Civil Code, *the husband takes inheritance from the whole of the effects of the wife*. The wife takes inheritance only from the 'moveable property' and 'buildings and trees'. It does not include land or farms, which are known as 'immovable' property. Articles 946–

[35] Article 913 – "In all the cases mentioned in this subsection, whichever of the spouses that survives takes his or her share which shall be half of the assets for the surviving husband and one-quarter for the surviving wife, provided that the deceased left no children or grandchildren; and it shall be one-quarter of the estate for the husband and one-eighth for the wife if the deceased left children or grandchildren. And the remainder of the estate is to be divided among the other inheritors in accordance with the preceding articles."

948 explain this rule, though these were amended on January 25, 2009. According to the amended articles, "the wife may inherit from 'the value' of her share from the land. In such cases the current value of the land shall be assessed and paid to the wife. But the main rule remained unchanged and women still may not inherit a share from land, but from its value" (Nayyeri 2013).

According to Article 942 of the Civil Code: *If there is more than one wife, one-fourth or one-eighth part of the assets, which belongs to the wife, will be divided equally among them.* Also, according to Article 949, if there is no other inheritor, the man inherits all the assets of his deceased wife, while the wife may only inherit a quarter of the assets and the rest belongs to the State. Therefore, women and men do not have the same rights to family benefits as mentioned in Article 13 of CEDAW.

Transfer of nationality

Article 976 of the Civil Code deprives women of the right to pass on their nationality to their husbands and children. An amendment to this law in 2006 allows children of Iranian mothers, born in Iran and after reaching the full age of 18, to apply for Iranian citizenship but only if their parents' marriage is officially approved.[36] Accordingly, women do not have equal rights with men concerning the transfer of nationality to their children as emphasized in Article 9 of CEDAW.

Guardianship over children

According to Article 1168 of the Civil Code, maintenance of children is both the right and duty of the parents, with the right of guardianship over children and supervision of the affairs of children, according to Article 1181, given to the father or paternal grandfather. For example, deciding on a departure from the country for children below the age of 18 is possible only with the approval of the father or the paternal grandfather – the mother has no legal say in such matters (Kar 2008). Therefore, women do not have the same rights and responsibilities as parents in matters relating to their children, as demanded in Article 16 of CEDAW (d, e).

Honor killing

If a man discovers his wife in another bed, he is legally allowed to kill his wife and her lover, according to Article 630 of the old Penal Code. This article, which remained unchanged in the new penal code, reads: *When a man sees his wife*

[36] Qanun-e Taien-e Taklif-e Tabeieat-e Farzandan-e Hasel az Ezdevaj-e Zanan-e Irani ba Mardan-e Khareji (The Law on Nationality of Children of Fathers of Foreign Nationality). Islamic Parliament Research Center. Available at: http://rc.majlis.ir/fa/law/show/97918 (21 June 2015).

committing zina (adultery) with another man, provided that he is certain that his wife is willing [to have sex], he can kill both of them in the same position; however if he knows that his wife acts under coercion, he may only kill the man [i.e. her rapist]. The same rule applies to assault and battery" (Nayyeri 2013).

Right to divorce

Women do not have the same right to the dissolution of marriage, as Article 16 (c) of CEDAW mentions. Article 1133 of the IRI Civil Code provides the man with the right to divorce his wife whenever he wishes to do so, but the woman is not entitled to the same right to divorce. According to Article 1130, women in certain circumstances *can refer to the Islamic judge and request for a divorce. When it is proved to the Court that the continuation of the marriage causes intolerable difficulty and hardship* (osr-va-haraj) *the judge can for the sake of avoiding harm and difficulty compel the husband to divorce his wife. If this cannot be done, then the divorce will be made on the permission of the Islamic judge*."[37]

Nonetheless, women benefit from a few measures to improve their domestic rights, such as 'marriage conditions' which must be published in marriage certificates.[38] These conditions have been in place since the beginning of Islam and "allow women to request certain rights, such as right to divorce, before the marriage takes place. If the man agrees to them, then the woman is entitled to request a divorce from a court whenever she chooses" (Kar 2008). Therefore, such

[37] Note added to Article 1130 in 2002: "the following circumstances, if proved in the relevant court, shall be considered as a case of osr-va-haraj (intolerable difficulty and hardship):
1. The husband's leaving of marital life for, at least, six consecutive months, or, nine alternative months in a one year period, without any acceptable reason.
2. The husband's addiction to any kind of drugs or alcohol that damages the marital life, and his refusal, or impossibility of compelling him, to quit the addiction in a period prescribed by the doctor. If the husband does not fulfill his promise [to quit], or, again begins his abuse, the divorce shall be granted by the request of the wife.
3. Final conviction of the husband to five years, or more, imprisonment.
4. Betray or any kind of mistreatment of the wife that is intolerable in the wife's condition.
5. Husband's affliction to incurable mental illnesses or contagious disease or any kind of incurable disease that disrupts the marital life.
The circumstances mentioned in this article are not exhaustive and the court may grant the divorce in other cases that *osr-va-haraj* is proved in the court" (Nayyeri 2013).

[38] Article 1119: "The parties to the marriage can stipulate any condition to the marriage which is not incompatible with the nature of the contract of marriage, either as part of the marriage contract or in another binding contract: for example, it can be stipulated that if the husband marries another wife or absents himself during a certain period, or discontinues the payment of cost of maintenance, or makes an attempt on the life of his wife or treats her so harshly that their life together becomes unbearable, the wife has the power, which she can also transfer to a third party by power of attorney to obtain a divorce herself after establishing in the court the fact that one of the foregoing alternatives has occurred and after the issue of a final judgment to that effect."

conditions can replace the law, though they will never be granted permanent status since many men will not agree to all the conditions.

Another amended act in favor of the financial situation of woman who is divorced by her husband is the right to receive *ujrat al-mithl* (wages for housework) from her husband. This is a monetary value placed on women's housework, determined by the court as compensation for household services rendered to the husband. However, despite all amended acts, a man still has unlimited power to divorce, and a woman only has a conditional right to divorce that must be proven to the court. This unequal right requires a woman, in most cases, to abandon all of her financial benefits, including her dowry, to obtain the man's acceptance of a divorce. Therefore men and women do not have the same right to marriage dissolution which is emphasized in Article 16 (c) of CEDAW.

Custody of children

According to Article 1169 – amended in 2002 – *For the custody of children, whose parents are separated, the mother has priority until the age of seven; and then, custody will devolve upon the father*. This continues in a Note*: After reaching seven years of age, in the case of dispute, considering the best interest of the child, the court will decide who receives custody of the child*. However, this article is conditional upon the fact that if a mother remarries, custody will devolve to the father, even during the priority age (before the child reaches seven years of age), as Article 1170 of the Civil Code stipulates: *If the mother becomes insane or marries another man during her period of custody, the custody shall devolve upon the father.* Such a restriction is not valid for the father.

Women's social, economic, and cultural rights

Some articles on women's cultural, economic and social rights are mentioned in the Family Law protocol, such as the right to work, dowry, maintenance, inheritance, stereotyped roles of men and women, and the right to transfer the nationality. Other women's issues in these areas are as following.

Choice of clothing

Women, both Muslim and non-Muslim, are required to wear Islamic dress. According to Article 638 of the Islamic Penal Code, "Women who appear in public places and roads without wearing an Islamic *hijab*, shall be sentenced to between ten days to two months' imprisonment or a fine of fifty thousand to five hundred Rials."[39]

[39] Islamic Penal Code of the Islamic Republic of Iran – Book Five. 2013. The Iran Human Rights Documentation Center (IHRDC). Available at: http://tinyurl.com/ndzlvg4 (16 June 2015).

Age of criminal responsibility

Article 147 of the new Penal Code – approved in January 2012 – states that "The age of maturity for girls and boys are, respectively, a full nine (8 years and 9 months) and fifteen (14 years and 7 months) lunar years." Therefore, if a girl aged 9 and a boy aged 15 commit crimes, they will be treated as adults.

Diya (Blood money)

According to Article 544 of the new Penal Code (similar to Article 300 of the old Code), "The *diya* (blood money) for murdering a woman is half that of a man." Accordingly, if a woman is killed by a man, the murderer will be sentenced to death, if the family of the murdered woman pay the murderer half of the blood money, as stipulated by article 379. A new solution for this unequal treatment is noted in Article 545, which provides: *In all cases of homicide where the victim is not a man, the difference between the diya and the diya of a man shall be paid from the Fund for Compensation of Bodily Harms."* Also, Article 554 explains *The diya of [harm to] limbs and bodily abilities, up to one third of the full diya, is the same for man and woman; however if it reaches, or exceeds, one third of the full diya, the diya of woman shall be decreased to half.* In such cases, the difference is not payable from the Fund for Compensation of Bodily Harms (Nayyeri 2013).

Article 299 of the new Penal Code stipulates that if a father or paternal grandfather murders his child or grandchild, the perpetrator does not face the death penalty, while, if a mother kills her children, and is proven guilty, then she will get the death penalty (Kar 2008).

Testimony of women

In many type of crimes, the testimony of women is not accepted in a court of law. For instance, Article 119 states that "Testimony of women, whether alone or together with men, may not prove *livat* (a homosexual act between men)." Article 199 of the new Penal Code explains the standard of testimony:

> The standard of testimony in all crimes is the testimony of two men, except in zina (illicit sexual intercourse), livat (homosexual act between men), tafkhiz (homosexual act between men without penetration), and mosaheqeh (homosexual act between women) which shall be proven by the testimony of four men. Zina may [also] be proven by the testimony of two men and four women, except in cases where zina is punishable by execution or stoning in which then the testimony of at least three men and two women is required. In such cases, if two men and four women give testimony, it is only punishable by flogging. Bodily injuries, which require diya (blood money), may also be proven by the testimony of one man and two women.

Therefore, the testimony of two women is the same as that of one man (Nayyeri 2013).

Homosexuality

Homosexuality is considered a crime, and those who commit homosexual acts will be severely punished. Articles 127–134 deal with homosexual acts between women, which will be punished by one hundred lashes. If the act is repeated up to four times, the accused shall be condemned to death (Kar 2008).

Women's political rights

There is no legal obstacle for women to work as Members of Parliament or as Ministers and some other positions in the government, although it does not seem women are allowed to attain all positions at all level of government as stipulated in Article 7 of CEDAW.

Women as judges

After the 1979 revolution, women were removed from judicial bodies as officers of the court. Later, they were granted judicial standing and the right to serve as counselors, but women are still not allowed to issue and sign final verdicts (Kar 2008).

Women as presidential candidates

Article 115 of the IRI Constitution defines the qualifications of the president candidates with an Arabic phrase (*rejal*) which means 'men'. It states: *The President must be elected from among religious and political men*; though it can be interpreted as 'personalities'. The task of interpreting this Arabic phrase is given to the Guardian Council which has never announced the condition of being a man as necessary for for president candidacy. However, the ambiguity within this article can be used to deny the political right of a woman to be president, which is conferred in Article 7 of CEDAW.

Conclusion

An overview on the laws of IRI concerning women's rights illustrates that men and women are not equal before the law, as Article 15 of CEDAW stipulates. Furthermore, women are not provided equal rights in various aspects of cultural, social, economic, and political areas as well as in the matters of marriage and family relations. Although the preamble of the Constitution considers the duty of the Islamic government as strengthening the basis of family, and releasing women from being an object or instrument in the service of promoting consumerism and exploitation; the laws do not seem to be successfully releasing women from being an object or instrument in other respects. Regarding family law,

marriage is understood as an economic contract between man and woman, so that the man gains household services and sexual ownership over his wife through the exchange of a dowry and maintenance as a sale price. In this perspective, a cooperative social relationship based on love, equality and partnership between parties of a family has no place, but rather it is based on the norms of authority and patriarchy. Therefore, women are still object and instrument, though in the framework of family and in the service of husbands. Such a perspective legitimates a family based on a relation between boss and subordinate, and the obedience of wife to husband, is a woman is therefore unable to attend to women's issues, human rights, and fundamental freedoms. Consequently this perspective is unable to provide women with life circumstances to support individual self-realization and human lives appropriate to human dignity.

Regarding the fact that the source of this perspective for defining laws and provisions is Islamic law, the question arises as to whether such a perspective on women's rights – which is not in accord with CEDAW – is the only interpretation of Islam. The following chapters shall investigate other interpretations of Islam on women's rights and their views on CEDAW.

5 Three Streams of Thought in the Near East and Iran and Their Views on Women's Rights

This section reviews the state of research on women's issues in different streams of Islam as well as secular currents in the Near East, and is followed by some aspects of the historical development of the main currents of Islamic thought.

5.1 Women's Position in Diverse Currents of Islamic and Secular Thought in the Near East: the State of Research

Gender equality is internationally recognized as a requirement for human lives and is crucial within the global conception of justice. In relation to religion, gender equality is often considered a cultural factor that defines value systems, which has made the subject of 'Islam and women's rights' a popular issue in several fields of human sciences. Studies relating to gender equality in the human sciences are generally based on three interpretations of Islam: the fundamentalist, the reformist, and the secular. Several studies also address the history of gender equality in Islamic countries (Keddie and Beth Baron 1991; Mernissi 1988) and the conditions and status of women in Islam in the Middle East and North Africa (Beck and Keddie 1978; Keddie 2007; Ahmed 1992; Tucker 1993; Hijab 1998). This section introduces a small contribution of the plethora of literature on women's issues in Islamic societies and the interpretations of fundamentalists, reformists, and secularists.

Studies on women's issues in fundamentalist interpretations

Despite significant regional and political differences among Islamic Fundamentalist movements, they have certain similar features. Fundamentalist movements are inherently opposed to modern and secular values (Shupe 2011); however, they do not opt for anti-modern living conditions. These movements are also anti-democracy and anti-feminist (Moghissi 1999: 76). Another characteristic that defines fundamentalism is violence (Juergensmeyer 2003), although not all fundamentalist groups are violent. They follow certain policies concerning matters

of family and gender relations by trying to turn women to more traditional roles. These methods include encouraging procreation, veiling of women, segregation of the sexes, control over female sexuality, and submission to patriarchal values (Emerson and Hartman 2006; Afary 1997; Haeri 1993). Shehadeh (2007) presents an analysis of the discourse on fundamentalism in the opinions of some prominent representatives, such as Morteza Mutahhari and Ruhollah Khomeini, their views in relation to women and women's role in society, and their aim to construct an Islamic society.

One remarkable point that must be considered regarding fundamentalism is that Muslim women have also participated in its construction, and it is not solely imposed on women by men (Ingersoll 1995, quoted in Afary 1997; Shehadeh 2007). Women are attracted to fundamentalism for several reasons, including the emphasis on family and the priority of raising children. Afary (1997) and Rinaldo (2010) indicate and discuss many studies concerning this matter, some of which will be discussed here. Women might have more interest in traditional culture and show a willingness to accept apparently secure patriarchal values to gain the husband's loyalty and economic support, including that for the children (Hardacre 1993; Kandiyoti 1988; Ong 1990; Ruthven 2007). This willingness can be related to the insecurities in the structure of society, such as unemployment, the low status of jobs for women, lack of childcare and the responsibility for household services for children and the elderly. However, women's position in a fundamentalist community is in a transitional phase, in that they are no longer largely confined to the home, but are gradually undertaking active roles and participating in public and business lives (Ruthven 2007). In this transition, women applying fundamentalist norms achieve some personal autonomy and subjectivity in building the Islamic society, which is considered by some scholars as another reason that women support the fundamentalist movement. An example on the subject of the subjectivity of women is their personal choice for veiling which is discussed by Smith-Hefner (2007) and Mahmood (2005). According to Smith-Hefner, the veil is also a symbol of modern Muslim women in Java; it enables women to live away from home and to have professional careers. Accordingly some argue that veiling of women, although it restricts women's individual freedom, can also provide women with more opportunities to access education and employment, to work as a member of political organizations, and to participate in public spaces.

Furthermore, veiled women in Muslim countries face less sexual harassment. The veil can protect women from sexual harassment in various forms, such as touching, fondling, stalking, and derogatory comments on the streets, in buses, and in work places, for which women not only have no recourse to law, but are also regarded as having seduced the men and are condemned for it (Abu Odeh 1993). In Iran, according to Rostamian (1390/2011), the veil is not intended to restrict women's freedom, but is necessary in order to protect morality, mental health and social security in society. The veil was also considered as a symbolic rebellion against the state's secularism and Westernization, taken up by educated women who rejected modernity that was defined by Western and secular

norms. Therefore, veiling provided a new generation of educated women with agency and an active role in creating an Islamic society (Brenner 1996; Göle 1996). Göle recognizes veiling in Turkey as a symbol of the politicization of Islam and explains how "Islamic veiling cross-cuts power relations between Islam and the West, modernity and tradition, secularism and religion, as well as between men and women" (Göle 1996: 21). Here, veiling as a product of a new interpretation of religion is not because of tradition, but as a result of modernity. Therefore, the veiling movement demonstrates a politicization of women and women's contribution in Islamic movements against Western values and implies women's individual autonomy. Paradoxically, on the other hand, the Islamic movement is against the visibility of women and their movement from the domestic private sphere to the public sphere (ibid.).

Ahmed (1992) argues that the veil was a response to colonial discourse and was taken by women as a symbol of anti-colonialism and anti-Western identity. During the 1979 Revolution in Iran, many women donned the veil to depict their resistance to the secular, West-oriented regime of Pahlavi (Najmabadi 2001; Afshar 1999; Moghadam 2003). The veil is considered as the most visible symbol of Islamization, which demonstrates itself in gender relations and the family (Mouser 2007; Stivens 2006). Mernissi (1987) criticized veiling as a reassertion of patriarchy and considers that traditions such as veiling, segregation of the sexes, and pushing women to the domestic sphere, derive from a desire to control the potential threat for the social order posed by women's sexuality. Furthermore, Mojab (2005) defined multiple meanings of the veil and challenged the assumption that women in Iran, Turkey, Egypt and Algeria using the veil to resist the secular state does not lead to accepting patriarchy.

Studies on women's issues in reformist interpretations

Although fundamentalism imposed patriarchal authority upon women, women have gradually attained individual autonomy (see above) and agency to rethink religious traditions, to reject gender relations imposed by fundamentalism, and to challenge the patriarchal tradition in Islam. A new consciousness and gender discourse emerged labeled 'Islamic feminism.' Islamic feminists reclaim an ethical vision of the Quran that liberates women and insistently enjoins equality and justice (Anwar 2009: 177). This new strategy aimed to re-read the Quran outside of the traditional, patriarchal interpretation for the advancement and empowerment of Muslim women. Badran (2001) identifies Islamic feminism as a new discourse within feminism. In her point of view, religion is not monolithic and static and there is possibility for change within an Islamic framework. Moghadam (2002) further argues that Islamic feminism could be regarded as part of a broader religious reformation within the Islamic world.

Islamic feminism articulates a Quran-based idea of the equality of all human beings, irrespective of sex, race, or ethnicity. In this view, the Quran does not

mention specific gender roles, but it instead emphasizes the notion of mutuality of the conjugal relationship, in the way that spouses are regarded as each other's protectors or 'mutual helpers.' This idea further holds that specific gender roles and the hierarchical order for women and men in the family are social and cultural constructions in the name of Islam (Badran 2009).

Islamic feminism is not restricted to a definite region, but it is particularly evident where fundamentalism was strongest (Badran 2005:7). By the end of the 1990s in Iran, the debate on Islamic feminism was especially prevalent among scholars who recognized the possibilities within Islamic discourse and the Islamic Republic of Iran to develop and improve women's position (Najmabadi 1997, 1998; Tohidi 1998; Mir-Hosseini 1996a, 1996b, 1998, 1999). Islamic feminism presents a vision of an 'ideal Islamic society' and women's role within that society, which enabled them to criticize the past, present, and 'traditional Islam' (Paidar 1996).

Nayereh Tohidi refers to the ability of Muslim women in Iran and elsewhere to renegotiate gender roles and codes, and to find "a path of compromise and creative synthesis" (Tohidi 1997: 106). In other words, women are 'bargaining with patriarchy' (Kandiyoti 1988, cited in Moghadam 2002), but also undermining patriarchal principles (Tohidi 1997; Kandiyoti 1988, cited in Moghadam 2002).

According to Najmabadi, Islamic feminism also creates a dialogue between religious and secular feminism; hence it provides a common ground and platform for cooperation with secular feminists in order to improve women's legal status and social positions (Najmabadi 1997, 1998).

Mir-Hosseini argues that new discourses on gender relations and debate on Islamic family laws have raised a new gender consciousness (Mir-Hosseini 1996). She also emphasizes the necessity of developing religion, law, and gender within the Muslim context and how gender equality is a 'newly created issue.' One of the most controversial concepts is *qiwama* which refers to male guardianship over women and caused obstacles in realizing gender equality before the law. The idea is derived from verse 4:34 of the Quran[40], and is therefore considered the basis for all laws concerning family relations. Although women may achieve some improvements in political/social relations, the area of family law rarely changes. Kabaskal Arat (2003) also refers to barriers in Islamic law in the implementation of gender equality. She says that even in Islamic societies that are to some degree secular, gender equality cannot be fully realized because family law has never been secularized and is still largely based on Islamic law.

[40] "Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand" (Quran 4:34).

As a result, verse 4:34 of the Quran as a resource for family law has been the subject of a range of studies that attempt to reinterpret this verse. Some of these studies are addressed by Mir-Hosseini (2013) (such as Al-Hibri 2003; Wadud 1999; Guardi 2004; Dunn and Kellison 2010; Marin 2003; Mubarak 2004; Mahmoud 2006; Elsaidi 2011). Also, a recent piece of feminist research – *Rethinking Authority in Muslim Legal Tradition*, edited by Mir-Hosseini et al. (2015) – with contributions from scholars from different disciplines, challenges male authority over women from within Islamic legal tradition.

The efforts to present egalitarian reinterpretations of the verse in the Quran and to generally develop women's position in society have been undertaken not only by Islamic feminists, but also by reformist Islamic scholars since the emergence of the reformist stream of thought. Reformist Islamic scholars have presented egalitarian representations of verse 4:34 of the Quran and have generally helped develop women's position in society. One of the earliest books on the status of women and their place in human existence was *The Liberation of Women* by Qasim Amin (1863 – 1908) in 1899. In this book, Amin criticized the way men treated women in Muslim countries, and he emphasized the necessity of reforms on women's issues, such as education, polygamy, and the veil. He regarded the liberation of women as a requirement for the liberation of Egyptian society from its inferior position and used arguments based on Islam to call for an improvement in the status of women. Amin further developed his ideas about women's emancipation in his second book *The New Woman* in 1900, which caused controversy.

An historical review of various reinterpretations of the pivotal verse (4:34) in classical and contemporary discourses from fundamentalists to modernists are illustrated by Stowasser (1998). Stowasser argues that although some modernists differentiated themselves from mainstream conservatism and aimed to reform traditional social structures, when it comes to the interpretation of this verse, they remained faithful to the fundamentalist interpretation. For instance, Muhammad Abduh (d.1905), a major reformist of Islamic theology who is considered one of the founders of Islamic Modernism, explained: "that in the God-willed natural order of the family, the man is charged with leadership (*qawama*) to protect domestic life and well-being. He is to the wife as the head is to the body. Men merit this 'superiority' because of qualities they alone possess, some innate and some acquired" (cited in Stowasser 1998: 35). However, this new epistemology has brought forth a form of theoretical treaty rather than Quranic commentary, such as Fazlur Rahman's effort to "establish a theoretical model that distinguishes between the Quran 'literal', situation-specific laws on the one hand and the eternally valid 'reasons', *rationes legis*, behind those laws on the other hand" (ibid.: 38).

Understanding women's issues in various regions of the Islamic world requires an historical context of the regions. For instance, in the Islamic Republic of Iran, where the *hijab* is compulsory but women are fighting to shed the veil, the exegesis of religious sources is emphasized, according to which the veil is

not obligatory, while in Turkey, some women are contesting the ban on headscarves and the issue of the veil is not their priority.

On the matter of reformism, there are a significant amount of studies that describe the practical efforts taken by women in various Islamic regions in order to achieve legal reforms in the context of women's lived social reality. These studies address, among others, countries and movements such as Morocco and Egypt and the global Musawah movement (Mir-Hossein et al. 2013); Turkey and Palestine (Afary 1997); the efforts of Afghan women's activists for women's rights in Afghanistan (Goodwin 2002); the efforts of the organization of Women for Afghan Women towards peace and economic stability (Mehta and Maaffarmoor 2002); Iran (Ahmadi Khorasani 2009); and legal reform on women's work in Jordan (El-Azhary Sonbol 2004).

Studies on women's issues in the secular stream

Secularist feminism entered into the Muslim world even before Islamic feminism. As Badran explains, "the foundational moment of women's 'secular feminism' may be traced to the late nineteenth century while the emergence of 'Islamic feminism' became evident in the late twentieth century" (Badran 2005: 6). Nonetheless, during the 1970s and 1980s, secular feminism stood in opposition to Islamists and their patriarchal definition of 'religion'. According to Badran:

> Women's secular feminist movements in the Middle East for many decades in the twentieth century struggled with considerable success within the framework of the nation-state, to make its institutions fully open and responsive to the needs of women and men alike as citizens (Badran 2005: 11).

Secularly-oriented tendencies, as Al-Ali (2000: 130) describes, accept the separation between religion and politics, although they do not denote an anti-religious or anti-Islamic position. However, secularist women do not recognize Islamic law as the main source of legislation; rather, "they also refer to civil law and resolution of human rights conventions, as adopted by the United Nations, as frames of reference for their struggle" (ibid.). Therefore, according to this approach, legislation and government are separated from faith and religious law. One can be Muslim and still be committed to equality and universal human rights as the basis for legislation, even when these may conflict with certain Islamic traditions and values. Hence, secular feminism is neither about hostility to religion nor about negating religion in people's lives. Rather, it is about separating state and religion and about the necessity of respecting human rights and gender equality, and not violating these rights in favor of religious traditions and values. However, secular feminism in the Islamic world is often considered to be a Western imposition that belittles and marginalizes not just religions, but lo-

cal cultural and moral values, particularly regarding the family (see: Ahmed-Ghosh 2008: 106–107).

In these struggles, secular feminism reproaches Islamic feminists for delegitimizing secular trends and strengthening the legitimacy of the Islamic system in Iran, as well as weakening the struggle of women inside Iran. Islamic feminism, in this view, "fails to offer a liberating alternative to the dominant Islamic discourse" (cited in Moghadam 2002:1150) and follows 'defeatist strategies' to propose demands acceptable within an Islamic framework. Therefore these strategies merely redefine gender identities such as manhood and motherhood. Real change and improvement in women's position comes outside of a religious framework (Moghissi, Shahidian and Mojab, cited in Moghadam 2002).

Nonetheless, some secular feminists believe that feminists should challenge the politics of the region. "If the current appropriate framework of social empowerment is Islam, feminists have to work with it to empower women. It is then for women in these situations to exercise their agency to bring the changes to their lives that matches their aspirations" (Ahmed-Ghosh 2008: 106–107). In this cooperation of Islamic and secular feminism, Islamic feminism provided a new edge in Islamic countries through offering new tools, while secular feminists provide Islamic feminism with a progressive religious discourse (see: Badran 2005: 13–14). Al-Na'im (1995) refers to the dichotomy between religious and secular views about the rights of women in Islamic societies and suggests the reconciliation and integration of the two types of discourse, and the minimization of the differences between them. On the one hand, discourse arises from the authority of scripture, and on the other, it derives from human reason and experience. Both discourses interact and overlap, which overshadows the sharp dichotomy between them. In other words, "it is conceptually misleading to speak of 'purely' religious or secular discourse about the rights of women" (Al-Na'im 1995: 51). However, it does not mean to discard the distinction, but to advocate for the human rights of women requires that one "fully engage in religious as well as secular discourse relevant to the matter! (An-Na'im 1995: 51–54). Only a partnering of these discourses "might avoid the schism and stalemate that may exist in the discourse on women's rights in the Islamic regions and help bring about at least some changes in women's rights and positions" in the Islamic countries (Ahmed-Ghosh 2008: 113).

Conclusion

This section introduced a set of studies on women's position in Islamic countries, which can be considered on a spectrum beginning with fundamentalism, moving gradually to reformist perspectives and ultimately to a combination of reformist and secularist discourses which seek to improve women's rights and situation in Islamic regions. The remarkable point in this matter is that the objective and aim of the change from fundamentalist insight to a reformist/secu-

lar perspective can be summarized as the strengthening and enlarging of women's human rights in streams of Islamic thought, so that the reformist view represents the shift from merely re-reading the scripture in order to present an egalitarian interpretation of the critique on scripture. This was initiated by a group of writers such as Fazlur Rahman (d. 1988), Muhammad Arkoun (d. 2010), and Nasr Hamid Abu Zayd (d. 2010). These authors have developed a "scriptural interpretative methodology which utilizes non-Islamic sources of textual critics", and "techniques from disciplines such as linguistics and literary criticism to advance the theory that the Quran is open to a diversity of interpretations"; (Mirza 2005: 310; Völker 2011), and as a result, they strengthen the foundations of the secular religious movement, which emphasizes that women's human rights are required to for women to flourish in a way that is appropriate to human dignity. Furthermore, according to An-Na'im, partnering secular and reformist views implies the union of revelation with human reason and experience. This requires a theoretical discourse to investigate the relations between revelation and human reason in various streams of Islamic thought and its importance in the improvement of women's position in Islamic societies. This study contributes to the small but growing body of literature that investigates the relationship between revelation and human reason by examining the different currents of Islamic thought and their perspectives on women's rights, from a sociological perspective.

5.2 Some Aspects of the Historical Development of the Islamic Mu'tazili and Ash'ari Schools

Muhammad (c. 570–632) was born in Mecca – a society based on tribal law and tradition. Meccans were traders who profited from the caravans that stopped in Mecca for water from its underground spring. Mecca was holy because it housed the Kabah, a bastion of idolatry, which was tended by the Quraysh – Muhammad's tribe. The prevailing religion was paganism; though God was accepted as the High God.

At the age of twenty-five, Muhammad married Khadija who was forty. Khadija was a widow who had hired Muhammad to manage her caravans. In 610, when Muhammad was forty, he declared that an angel visited and spoke to him during his yearly spiritual retreat to a cave on Mount Hira. Khadija was his first convert, convinced that Muhammad had received revelation. In the first three years after his prophecy he shared his revelations with a small group of friends and family members, who became his followers. The Quryash and the leading merchants of Mecca responded to his public preaching with hostility, and they mistreated Muhammad and his followers. To escape persecution and mistreatment, he and his followers migrated to Yathrib (later known as Medina) in 622

CE, the beginning of the Islamic calendar (Armstrong 2001). In Yathrib, Muhammad established a political system uniting the significant tribes and families, including Jews, Christians, Muslims and pagans, under the 'Constitution of Medina', which later became the basis of what is now known as the first Islamic state (Marranci 2010: 365).

After eight years of war with the Quraysh, Muhammad conquered Mecca. By then Islam had spread throughout the Arabian Peninsula under a single Muslim polity. However, by his death in 632 CE, this community was split into two major denominations: the *Sunni* and the *Shi'a*. This divergence was political, brought about by the question of succession. The *Sunnis* believe that the Prophet did not explicitly appoint a successor to lead the Muslim community before his death, so Abu Bakr – Muhammad's close friend and a father-in-law as well as the most senior among his followers – was chosen by the majority of the community as the first caliph (the vicegerent of the Prophet). He reigned from 632 until his death in 634. Unlike Muhammad, he appointed a successor, Umar ibn al-Khatab, who reigned for ten years. His successor, Uthman, was chosen by an electoral conclave of six of the most notable followers. The fourth caliph was Ali ibn abi Talib, Muhammad's cousin and son-in-law. By contrast, the *Shi'a* believes that Ali was chosen by the Prophet as the first successor.

Another distinguishing factor between the two parties is their understanding of the nature of the Prophet's successor. In the *Sunni* view, the Prophet's successor is a person who should protect the Divine Law through leadership over the community. The *Shi'a* believes that the successor must be chosen by God and the Prophet and is someone who should be able to interpret the Quran and Islamic law. This person must descend from the line of Muhammad. Such a figure is called an Imam, who has the right to spiritual and political rule over the community. They believe that there are twelve Imams descending from Muhammad, the last of whom is in occultation, that is, not outwardly present in this world and yet alive. The twelfth Imam will appear one day to bring justice and peace to the world. For the *Shi'a*, Muslims must believe in the authority of the Quran and the teachings of Muhammad as well as the authority of the Imams (Nasr 2002: 10–12; Marranci 2010: 365–6).

Mu'tazili and *Ash'ari*

Among the different schools of theology in Islam, *Mu'tazili* emerged in Basra and Baghdad in the second century AH (after hijra, approximately the eighth century AD). The *Mu'tazili* school believed that reason and rationality were important for defining morality and justice. It recognized human reason as God's gift to achieve rational judgment in morality, and it was considered prior to and independent of revelation. Accordingly, they emphasized the importance of reason to knowing God and to evaluate the teachings of Islam, thus grounding Islamic laws in human reason. In their view, it is not possible that God's will con-

tradict rational criteria. Therefore, the divine commands also follow the criteria of justice (Motahhari: 228–9).

The *Mu'tazili* was known for five theological principles, the two most important ones being the unity of God and divine justice. Their view on the unity of God led them to debate whether God's attributes in the Quran were to be interpreted allegorically or figuratively. They regarded divine transcendence in a rational manner and warned against literal interpretations of the Quran in order to avoid an anthropomorphic image of God. In other words, human characteristics cannot be attributed to God, so that as Nasr points out, when "the Quran asserts that God is the Hearer and Seer, the *Mu'tazili* claimed that hearing and seeing in this case had nothing to do with what we understand by these Attributes" (Nasr 2002: 155). By claiming this, they "denied the eternity of the Quran, which, being the Word of God, is obviously inseparable from the reality of the Divine Names and Attributes" (ibid: 156). The other important *Mu'tazili* principles of divine justice led them to assert the existence of free will to counter the idea of predestination. They asserted that God bestows freedom on people in order that they can choose whether or not to perform a specific act. It must be noted however, that the *Mu'tazili* idea of rationality is different from the way it is understood in modern times. This is because while human reason is of crucial significance, the idea of individual rights did not exist in this tradition (ibid.).

The *Mu'tazili* provided grounding for a second major school of theology in Islam, the *Ash'ari* – named after its founding thinker, Abul-Hasan al-Ash'ari (d. 330/941). *Ash'ari* emphasized that the meaning of the divine attributes be taken and understood exactly as they are written in the Quran. According to the *Ash'ari* school the Quran was eternal, meaning that it does not change and contains the exact words that were received by Muhammad. Its members tried to restrict the use of reason and insisted that reason must be subservient to revelation. For this school, God's will, as presented in the Quran, is absolute and cannot be challenged. It is beyond human rules, and therefore beyond human reason. All laws and principles created by humans are subordinate to the laws of God. This also means that justice cannot be defined by human reason. God's will is the sole criterion for justice; therefore God's will is justice. Furthermore, Islamic law defines what is good and evil, and what is beneficial and harmful. This means that for the *Ash'ari*, whatever God does is just, good, and beneficial. This is in contrast to the *Mu'tazili* belief that God does *only* what is just, good and beneficial (Motahhari, 229).

Therefore, divine justice according to the *Ash'ari* school is a matter of faith. Good and evil are defined by God's revelation and the only purpose of human reason is to understand God's will as it is mentioned in the Quran. Consequently, only God's absolute will is emphasized as the ultimate source of morality. Therefore, a human being's duty is defined by the *Ash'ari* School as submitting and performing God's commands as revealed to the Prophet (Sachedina 2009:59–61; Islamic Philosophy Online).

Key concepts in the main currents of Islamic thought

Such disputes about human reason and its relation to revelation intensified in the eighteenth century, when Muslims faced challenges to their faith and the social order brought about by modernity and enlightenment from the West. There were various reactions within the Islamic world such as revival movements, Islamic reformism and Islamic modernism. Some of these movements reinterpreted sources of Islamic teaching from their own tradition to obtain new answers to the social, political, and economic challenges posed by Western ideas and institutions (Esposito 2011: 184). Others tried to retain their religious and cultural identity by reviving the Divine Law. This Islamic resurgence was seen as an alternative solution, a religious justification to oppose Western secularism as a system that has caused political, economic, and military crises in the modern era (An-Na'im 1996: 4).

These reflections produced different interpretations of Islam that can be categorized based on their understanding of how compatible Islamic laws are with a specific time and space; as well as how they define the relationship between human reason and revelation. There are three major interpretations of Islam, as aforementioned. Within a spectrum, on the far right are fundamentalists, in the middle reformists, and on the far left are the secularists. Fundamentalists are often associated with traditionalists who also believe in the revival of the Divine Law. However, they deviate in the ways in which Divine Law should be revived. Fundamentalists believe that the only way to establish Islamic law in society is through political power, thereby politicizing Islam. As such, the political Islam proclaimed by fundamentalists "is a modern phenomenon that seeks to use religion to shape the political system" (Akbarzadeh 2012: 1). In their efforts to gain power, some fundamentalists – as extreme fundamentalists – might use all possible means, including violence, to gain access to political power in order to implement Islamic law, while traditionalists do not seek to gain access to political power for its implementation. Today, however, their response to modern issues is to oppose the imitation of Western culture and to denounce Western technology while pushing for a return to an Islamic culture and doctrine (Nasr 2002: 181).

As explained earlier, one key for distinguishing the various streams of Islamic thought is to examine the compatibility of their perspectives on Islamic laws with a specific time and space. That is, examining to what extent the Islamic laws can evolve over time and space in accordance with social changes. The key point here is what Islamic law actually consists of.

The sources of Islamic law

The first major source of Islamic law is God's revelation, as found in the Quran. The Quran contains legal prescriptions and general moral instructions on what Muslims ought to do. The Quran as a source of Islamic law is comple-

mented by the *sunna*, the normative model behavior of the Prophet, as Muhammad was divinely inspired and his behavior became a norm for the community. After his death, there was a problem-solving process in society which followed the majority opinion or consensus of a community of legal scholars and religious authorities. This process refers to another source of Islamic law called *ijma,* meaning consensus, which was derived from a saying of the Prophet, "my community will never agree on an error" (Esposito 2011: 95–101).

Through the course of time, Muslim societies have faced many new issues for which there have not been any solutions to be found in the Quran or *sunna*. For such situations, another alternative for Islamic law is *ijtihad*. It means going back to the Quran and *sunna* to reformulate a law in a fresh manner. Those who have the qualification to practice *ijtihad* are called *mujtaheds.* It must be noted, however, that *ijtihad* was not considered a source of Islamic law in the *Sunni* world until the fourth century AH (the tenth century AD), while in the *Shi'a* world, this has always been an option (Nasr 2002: 79). Both sources – *ijma* and *ijtihad* – imply the application of human reason in finding solutions for new issues that cannot be answered by the Quran and *sunna*. Therefore, the definition of human reason and its relationship with the main sources of Islamic law is a crucial criterion in categorizing streams of Islamic thought.

The following sections shall generally introduce these main streams of Islamic thought; it proceeds with the narratives and opinions of representatives of each group followed by a comparison and analysis of the status of women's rights and gender equality in each of the main thought streams, applying the theoretical model suggested in the chapter on theoretical models.

Part Two:

Changing Gender Norms in the Main Currents of Islamic thought in Iran

Introduction

In the following section I will analyze the different interpretations of women's and human rights in the fundamentalist, the reformist and the secular perspectives in contemporary Iran. Following the theoretical framework and documentary analysis, my approach is to reconstruct the interpretations of three core issues, which also underlie the guidelines of the expert interviews as outlined above. The first issue is that of religion, Islamic law and the Quran. The second refers to the view of human reason – and the potential endowment of men and women with it – as well as gendered rights, especially women's rights. The third issue is how each perspective views human rights considering Islamic teachings and the universal norms of justice. While not all of these points will be covered in an equal way, they provide an interrelated set of issues for a comparative analysis. These issues are seen in their interrelationship and referred to each other in the discussion. The results focus on the following aspects as described above:

1. Structure (approach to religion, the interpretation of Islamic law and the Quran)
2. Individual agency (human reason in the relationship between human beings and God as well as society; defining gender equality in Islam and gender differences and human rights)
3. Global norms of justice and human dignity (CEDAW, UDHR) in an Islamic perspective

Ultimately the current legal instructions related to the women's rights in Iran as Islamic laws will be discussed. Each chapter ends with a conclusion including discussions on the perspectives of each major thought stream on these aspects.

6 Revelation and Gender Norms in the Fundamentalist Perspective

An important starting point for this section is to differentiate the fundamentalists from the traditionalists, with whom they are often associated. Both groups have the same arguments about applying Islamic law and the relationship between human reason and revelation and re-Islamizing society. They differ in perspective when it comes to the ways of reviving the Divine Law. Fundamentalists seek to establish Islamic law in society through politicizing Islam, while traditionalists do not seek to gain access to political power for implementing Islamic law. Traditionalists seek to ignore Western culture and Western technology and push for a return to Islamic culture and doctrine (Nasr 2002: 181). While it is necessary to differentiate the two groups, and some arguments by traditionalists are mentioned, this chapter will only focus on the fundamentalists and discuss their opinions on social and political affairs and the impact of Islamic policies on women's rights and gender equality.

6.1 Religion as Structure

In this section, religion is considered as structure. The definition of religion and the approach to the Quran as the source of revelation shall be debated in the following.

Definition of religion

Fundamentalists believe that Islam is a set of creeds which, in a given time and space, were revealed by God to Islam's Prophet as the ultimate and absolute religion for human salvation. It is based on justice and its goal is the worldly and eternal happiness of human kind. Islam has fixed and eternal laws which all believers must practice in every era and society without alterations, for it cannot be subjected to any form of change. In fact, every change in Islamic law is, for Fundamentalists, an innovation in religion and therefore completely unacceptable. They emphasize that Islamic law is "the divinely revealed path, it is not the law that must

change or modernize, they say, but society that must conform to God's will" (Esposito 2011: 257).

Fundamentalists believe that the fulfillment of justice is one of Islam's goals. According to Mesbah Yazdi[41] justice does not require any philosophical and intellectual debate because the way to attain it is prescribed both in the Book (Quran) and the Tradition (*sunna*). Since the laws were accepted and adopted by the Prophet, they are just and fair and shall remain just and fair forever (Mesbah Yazdi 1386/2007: 22–23). In other words, since God's will is 'ipso facto just,' obedience to his commands by all his creatures, as embodied in Islamic law, leads to perfect justice (Mayer 2007: 53).

Fundamentalists do not recognize different interpretations of the Quran and tradition, emphasizing that the Prophet delivered God's exact message to his followers. Indeed, the Prophet's way is very clear and it is apparent that there is no room for doubt and suspicion. As such, when someone claims that the way of the Prophet is as he interprets, he is in effect tarnishing the word of God, which is considered disrespectful towards Islam. Such people are considered devils who only interpret the word of God to their own advantage (Mesbah Yazdi 1389/2010). In the fundamentalists' opinion, the different readings of religion block and impede the way to finding the truth for future generations. They believe that different interpretations of the scripture are symbolic of the temptations of Satan to prevent humans from achieving the truth of religion. These in turn lead to disbelief and doubt in the truth of religious texts. Furthermore, various interpretations result in the attribution of human characteristics to God and

[41] Mohammad Taqi Mesbah Yazdi (born 1934) is a hardline Iranian Twelver *Shi'i* cleric and political activist. He was a member of the Assembly of Experts of the Islamic Republic of Iran (1990–2016), which is responsible for choosing the Supreme Leader. From 1952 to 1960, he studied in Qom with Imam Khomeini (d. 1989); he also studied Quran exegesis, and the philosophies of Ibn Sina and Mulla Sadra with Allamah Mohammad Husayn Tabataba'i (d. 1981). He also participated in Ayatullah Bahjat's (d. 2009) *fiqh* seminars. During the Ahmadinejad Presidency, Mesbah received a more prominent role in politics.
His political activities began in the 1950s with his active participation in forming religious opposition to the Pahlavi regime. When Khomeini was in exile, Mesbah Yazdi accompanied by some other students of Khomeini initiated discussions on Islamic perspectives on social problems such as *jihad* and the Islamic political system. He was also on the board of directors of Haqqani School in Qom in the 1960s, where for about ten years he also taught Qur'anic studies, philosophy, and ethics. Since 1975 he has established, directed, and taught in different academic institutes such as the education department in the Dar Rah-i Haqq institute, the Baqir al-'ulum Cultural Foundation, and the Daftar-i Hamkari Hawzah va Danishgah (the office for cooperation between the Hawzah and the university). He is now the director of the Imam Khomeini Education and Research Institute in Qom. He has written numerous publications on Islamic philosophy, theology, ethics, and Quranic exegesis.[Mesbah Yazdi, Mohammad Taqi. Biography.Official Website of Mesbah Yazdi, available at http://www.mesbahyazdi.org/english/?biography/index.htm(29 June 2015). Also: Mesbah Yazdi, Mohammad Taqi, Biographical Encyclopedia of the Modern Middle East and North Africa, available at: http://www.encyclopedia.com/international/encyclopedias-almanacs-transcripts-and-maps/mesbah-yazdi-mohammad-taqi-1934(29 June 2015)].

his word, leading to falsity and distortion of religion (Mesbah Yazdi 1389/2010). Therefore, fundamentalists reject different readings and claim that Islam is not compatible with different interpretations. The only valid interpretation is that presented by the Prophet and the Imams.

Muslims are not allowed to interpret and give opinions about the absolute and certain rules of Islam. Every rule explained by Islamic scholars during the past 1400 years are correct and unchangeable. Expressing counterclaims about requirements, essentialities and absolute conceptions of Islam has no result but a life of sin and depravity and falling into hell. There is no space for personal opinion and authority in understanding and reading the absolute conceptions of Islam. Any idea other than God's, the Prophet's, the Quran and the Imams' readings should be rejected as mere trash (Mesbah Yazdi 1378/1999 and 17 September 1999).

Accordingly, fundamentalists believe the Islamic creedal system is beyond human reason and must therefore be followed by human beings, even though it seems to be against human rationality. However, those fundamentalists closer to the reformists on the continuum believe in dividing the Islamic precepts into changeable and unchangeable. They also divide Islamic law into two categories – essential unchangeable law and subsidiary (secondary) modifiable law, which shall be discussed in next chapter. In this way, "Islam is based on human values and aims to protect human rights, as well as to fulfill justice; therefore, Islam can be adapted to every civilization" (Interview B January 2011). In this definition the Islamic precepts are divided into two forms of confirmative (*imza'i*) and constitutive (*ta'sisi*) precepts. Confirmative, or *imza'i*, refers to the old traditions and customs practiced before the revelation, which were later adapted into Islamic precepts during Muhammad's time. Therefore, the confirmative precepts can be changed to adapt to the current conditions of society. The constitutive rules refer to the precepts received by the Prophet through revelation and have never been subject to change (Interview B January 2011).

In this regard, religion is a wide set of structures and ethical *do*s and *don't*s, which must be distinguished from the soul or essence of religion. This essence refers to spirituality as a worldview, different from the Western understanding of spirituality (Interview C January 2011). In this view, spirituality means that the universe consists of material and nonmaterial or intangible elements. The belief in the nonmaterial elements of the universe is the essence of religion. For the believer, the spiritual world is important and the material world is only a manifestation of the spiritual world and God's eternal power. Therefore, all precepts related to worship and moral instructions are means to reach the spiritual world; hence they are essential and unchangeable. Precepts related to social affairs and the material world, in contrast, are changeable (Interview C January 2011).

Yet what creates the fundamentalist view is their definition of human reason. Human reason in this view is subservient to and dependent on divine revelation. Nonetheless, there is no definite boundary between reformists and fundamentalists on the spectrum of streams of Islamic thought and their views overlap in certain aspects.

Islamic law

In the fundamentalist view, since religion is aimed at managing human society and educating the human being, it is necessary to have rules and regulations in accordance with the requirements of society as well as human nature. These regulations and laws have inevitably remained the same throughout human history. This is because human nature is unchangeable. Changes are manners and habits of human beings in the material world. Hence, the only one capable of legislation is one who knows the characteristics and the essence of human existence. In other words, only God has the right to legislate laws for human beings. As a result, the human being requires religion and revelation to manage his/her individual as well as social affairs to reach salvation and felicity in social and individual life (Interview A January 2011). Accordingly, fundamentalists also reject the idea of the flexibility of laws according to time and circumstance. They argue "if the laws obey the times, then who should the times obey? That would imply that laws should follow the wishes of the people" (Omid 1994: 57), who are fallible and liable to make mistakes because of their free will. In a fundamentalist point of view, the law is responsible for controlling and conducting society. For this reason, human beings need to rely on eternal and absolute values, as well as on a set of laws and practices that are beyond time and the wishes of fallible people. Such eternal law, according to fundamentalists, can be found in Islamic law aimed at the salvation of human beings in this world and in the afterlife (Mesbah Yazdi 1378/1999).

Furthermore, Islamic law in the fundamentalist view begins with the rights of God and defines all worldly rights in the light of God's rights. "Thus, all rights accorded to others in business transactions and other civil matters are linked to the rights of God, which impart value as sacred and ontological guarantees" (Arkoun 1994: 112). Therefore, law is sacred and "the free creation of law by means of reason is excluded" (Lane and Redisi 2004: 93). According to Fundamentalists, the truth, as the basis for law, has been received from above and should be realized on earth through Islamic law. This is in contrast with the process of law creation in democratic systems, where the truth is gained from below by the countless interactions between groups and individuals (ibid.: 71–2).

Approaches to the Quran: a direct word from God or the Prophet's experience (Interpretation)

In order to be able to criticize the Quran, Secularists and some reformists desacralize the text and claim that it is not exactly God's word. They consider the Quran as a historical text. Fundamentalists reject this view and consider the Quran as the direct word of God, and thus consider it holy and not subject to criticism.

Javadi Amoli[42] distinguishes the truth of religion from religious cognition. The truth of religion refers to the essence and existence of religion which comes from God and is manifested through a set of beliefs, morals and rules to guide human being towards salvation (Javadi Amoli 1372/1993).

Religious cognition, as Javadi Amoli (1372/1993) explains, is divided in two aspects. First, revealed cognition is an intuitive knowledge that is free from any falsity and errors, as this knowledge was revealed to the Prophet by God. Therefore, the Quran is God's word, which was received pure and untarnished by the Prophet. The second layer of religious cognition deals with people's perception and understanding of revelation rather than the revelation itself. Javadi Amoli named this kind of religious cognition *narrative* or *interpretative* cognition. As a result, only the Prophet possesses revealed cognition and what is acquired by the people is merely an interpretation and understanding of revelation. Accordingly, the Quran is the direct word from God revealed to the Prophet (Javadi Amoli 1372/1993).

In this view, God was also able to consider people's ability to perceive at the time of the revelation; therefore, God sent the message to the Prophet in a way that was comprehensible for the people. Accordingly, the revelation was articulated in the current language of the Prophet's time, based on the culture of that time (Interview B January 2011). This accordance with the culture and language of the time of the Prophet was restricted to the form of revelation. It means that however the culture and language confine the form of revelation, the content and essence of revelation are not limited to that form, so that the revelation helps the improvement of human reason, as well as culture in different epochs. Therefore, the parts of revelation which are scientifically rejected, such as verses about seven heavens, are only a mistake in the interpretation and human perception of the verses and not a mistake in revelation (Interview B January 2011). In this view, the Quran is the direct word of God; although God's voice is ubiquitous, only the Prophet was able to hear it through his transcendence by God's will. As such, the Prophet was only obligated to convey God's message to other people (Interview C January 2011). Therefore, fundamentalists, even those close to reformists, reject secular and reformist attempts to justify such misunderstandings by considering the Quran and revelation as the Prophet's experience rather than a direct word from God.

[42] Abdollah Javadi Amoli (born 1933) is an Iranian *Shi'a* cleric and an Islamic scholar. After middle school in 1944 he entered in the theologian seminary of Amol, and continued his religious education in Mashhad, Tehran until he went to the theological seminary of Qom in 1955. He has remained there since, first as a student and then as a master in the present day. After the 1979 revolution, he undertook different posts, such as the Chair of the Revolutionary Court, a member of the Supreme Judicial Council and member of the Assembly of Experts for Constitution. He has been one of the regular Friday prayer leaders in Qom since 1979 [Javadi Amoli, Abdollah. Biography. Esra International Foundation for Revelatory Sciences.Available at: http://www.esranews.org/biography.aspx (29 June 2014)].

6.2 Individual Agency and Human Reason

This section deals with the concept of the individual, including man and woman, and aims to present the fundamentalist perspective on the equality of men and women in religious doctrine, and the role of human reason in the relationship between the human being and the creator, as well as with other individuals in society. The concept of rights is discussed in this section to ascertain the view on a human being's identity as rights-bearer or obligation-holder to God. Accordingly, it discusses the meaning of rights and its changeability, as well as the legitimacy of rights – if rights are defined based on revelation or human reason, and ultimately if they are defined based on gender.

Human reason

Human reason in the fundamentalist perspective is recognized as a legitimate resource to understand revelation. Fundamentalists do not deny human reason and consider the human being to be intelligent, though this intelligence needs to be guided by revelation (Nasr 2002: 66), because human reason is insufficient "to criticize what are treated as divine edicts"(Mayer 2007: 61). In the fundamentalists' point of view, only God has comprehensive knowledge about all human conditions, and human knowledge is dependent on how much of this knowledge God 'reveals' to human beings. Reason in this sense is restricted by God's will (Akhtar 2011: 189–198). Therefore, human reason without revelation is insufficient to conduct human affairs, whether in political, economic, or social matters of society as well as in personal life.

The role of human reason in the relationship of the human being with God and society

The fundamentalist view on the role of reason is similar to that of the *Ash'ari* school. Both insist that reason must be subservient to revelation, though fundamentalists recognize reason as a requirement for understanding the revelation and divine precepts for individual and social life.

In this regard, the value of reason according to the Quran is to contemplate nature and God's creation (Interview A January 2011). However, the Quran also emphasizes that reason without revelation is insufficient to understand nature and God's creation. As social beings, humans need regulation and rules to govern their social relations. Consequently, the rules and regulations should be written only by a person who relies on divine revelation. Hence, religion is necessary for the relationship of human beings with God, as well as with other people and society. Moreover, revelation must serve as guidance for reason and emphasizes that reason must follow revelation, even if one is not able to understand it (Interview A January 2011).

Human reason plays a crucial role in knowing God and his characteristics. In other words, it is important to believe in God and religion, as well as to understand the message of the Prophet. Human reason is also necessary in order to be able to accept faith. It also performs an essential role in the relationship between human beings and society, as well as in perceiving and discovering the divine rules for social life. The divine rules are revealed through revelation, but human reason has influence in discovering and interpreting them (Interview B January 2011). However, reason unaccompanied by revelation is incomplete, since reason would only follow human desires that detach human beings from divine nature. The human is confined to his material environment and is not able to define law without revelation. Saanei (Interview B January 2011) also refers to the Islamic precepts and instructions about social affairs and managing society and says that the separation of religion from politics in a religious society is unacceptable.

Besides, the basis of reward and punishment is found in the human ability to reason (Interview C January 2011). In fact, knowledge and awareness determine how a human values God. Thus, the person who worships God consciously stands in higher rank compared to the person who worships God unconsciously. Therefore, human reason is the criterion for believing in God, though reason is not independent from revelation (Interview C January 2011).

Changeability of rights

Fundamentalists are of the opinion that human reason is insufficient for defining human rights. It must be guided by revelation. However, Fundamentalists who lean towards reformism differentiate rights from laws or precepts, arguing a rational basis and flexibility of rights, while still recognizing the importance of revelation.

This view considers some rights constant and some rights changeable, according to different events in human life. Nevertheless, defining rights must be based on revelation, even when reason has an important role (Interview A January 2011). In this way, exploring the human truth and purposes of the created world is beyond the access of human reason. Therefore, gaining knowledge is possible only through revelation. Hence, revelation is the origin of all knowledge which is necessary also for defining rights.

There is also a difference between rights and Islamic precept. Rights are a kind of property, whereas Islamic precept does not belong to anyone. Rights can sometimes be transferred; inherited or even revoked but this is not the case for Islamic precept. In fact, Islamic precept is determined by God through a religious legislator. Therefore, it is constant and not changeable, while rights are changeable (Interview B January 2011).

Another categorization is that based on basic and fundamental rights, such as the right to freedom, the right to life, etc. which are constant and are essential

to human beings. Such rights are innate and are implied by virtue of being human. Other rights are based on social interests and are thus changeable and their changeability does not affect basic and fundamental rights (Interview C January 2011).

Equality of man and woman in religious doctrine

The fundamentalists believe that men and women are created equal in humanity and human dignity. However, extreme fundamentalists do not recognize that every human being has human dignity. They argue that only believers of God, those who submit to divine precepts, follow divine guidance and practice purifications to achieve human perfection have dignity. Though man and woman are equal before God, fundamentalists argue that human dignity does not mean they have equal rights. This is because rights are defined based in the natural differences between men and women.

In Javadi Amoli's (1372/1993) opinion, humanity and human dignity are essential and constant. Race and gender are secondary characteristics that do not have any influence on humanity. Such secondary factors are simply a means for knowing other humans better. In his opinion (1372/1993), the human being consists of two essential components. First, it is human's worldly instinct that attracts the human to the material world. Secondly, it is her/his divine disposition that guides him to God. There is continuous conflict between the two components that is experienced by both man and woman. The important point is human efforts to achieve perfection, which is only possible through edification, purification and by paying more attention to divine disposition. This is the only way to achieve human dignity. Since divine disposition is abstract, it cannot take any material characteristics like being male or female. Consequently, man and woman are equal in their humanity and human dignity. They similarly face the same struggles between worldly instinct and divine disposition, as well as the means for purification to achieve human perfection (Javadi Amoli 1372/1993).

Another representative of this group (Interview B January 2011) considers all people equal in matters that are out of their control and that they cannot change. If God preferred one race over another, for example, it would mean that He is not a just God which is contrary to Islamic teachings.

Furthermore, based on some Quran verses, human beings are created equal regardless of race, gender, and ethnicity (Interview B January 2011). Therefore, there is absolute equality in the creation of humanity and the human dignity of man and woman. However, man is naturally tough while woman is naturally delicate. Thus, man and woman complement each other and are therefore equal. There are some limitations and differences in the rights of men and women based on their social obligations, but these differences do not imply discrimination in creation (Interview C January 2011).

Gender difference and men and women's rights

In the fundamentalist perspective, though man and woman are created equal and have the same responsibilities before God, they do not enjoy equal rights, for their rights are based on natural and physical characteristics, which differ.

In Javadi Amoli's (1372/1993)) point of view, there are two aspects in a human being's life. One is divine disposition, which is his/her responsibility to God. In this aspect, gender difference is secondary and not a fundamental point in determining rights. The other aspect is a human being's responsibilities in social relations, as he/she fulfills his/her responsibility to God. It is in this aspect that gender plays an important and determining role. For example, both men and women must try to come closer to God, though the manner of becoming closer to God, such as *Jihad* (crusade) and martyrdom are considered differently for man and woman.

In the opinion of a fundamentalist representative close to reformism, rights are defined by humans and should be based on justice. While he believes that depriving a woman of her rights is an injustice, if such deprivation is based on Islamic precepts, he does not consider it as an injustice; but rather tries to find an argument for it (Interview B January 2011). An example that he gives is the law of inheritance, which shall be discussed later in this chapter.

This view argues that even when man and woman are equal in creation, they do not enjoy the same rights because of their difference in nature; for example, man is created to be tough and by contrast woman is delicate (Interview C January 2011).

6.3 Global Norms of Justice and Human Dignity

This section investigates perspectives on the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and their acceptability in Islam.

In the following, the UDHR and women's rights are discussed in the works of contemporary fundamentalist representatives in Iran. Although similar arguments are mentioned by other prominent thinkers in this stream of thought such as Morteza Motahhari (1919–1979) or Seyyed Mohammad Hossein Tabataba'i (1903–1981), this study mainly restricts itself to current and living thinkers to gain a picture of the contemporary debate on these subjects.

UDHR in the fundamentalist perspective

The fundamentalist perspective speaks of 'metaphysical human rights' which, according to fundamentalists, was neglected in the UDHR. They recognize 'God's right' as the source and origin of rights in the Islamic judicial system.

All sources of Islamic law including the Quran, tradition, consensus and *ijtihad* are aimed at discovering and retelling the will of God. All of these sources originate from and are not independent of God's will. In this view, human rights must be perceived as a minor branch of 'God's rights.' Since in the Universal order, absolute sovereignty and omnipotence is only for God and all other powers are derived from him, God's right is the source and origin of all rights (Mesbah Yazdi 1388/2009: 70; 95). They also argue that since human beings are God's creatures, they are unquestionably of divine origin, and therefore follow the divine order. Accordingly, in this perspective, only God is "the author of law and the source of all human rights" (Arkoun 1994: 106). Therefore, God determines the boundaries of a human's duties and rights. God can also take a human being's life or order a person to do this as He is the owner of human beings' bodies and lives, and all human beings are responsible and obligated to treat their lives and bodies based on God's injunctions. Accordingly, "there is no such thing as human rights without human responsibilities. All human rights derive from the fulfillment of responsibilities to the Giver of human life" (Nasr 2002: 30).

Mesbah Yazdi (1388/2009) criticizes different articles of the UDHR and rejects them as being against Islamic law. In his opinion, Articles 6–15 of the Declaration do not have any opposing notion with Islamic laws, yet to him some rights such as equality, fraternity, nondiscrimination, the right to freedom and individual security mentioned in Articles 1–4 appear more like slogans. He believes that the rights mentioned in these articles cannot be proved by rational analysis independent from revelation, therefore discussing and determining such rights would require religious perspectives mentioned in Islamic law. In his discussion of the third article of the UDHR according to which 'everyone has the right to life, liberty and security of person', Mesbah Yazdi points out that conceptually the right to life is absolute and that, for example, no one shall be killed even if he has committed a crime or offense. However, he claims that this absolute right is an illusion and that people who believe in the inviolable right to life do not believe in the right of God, and only regard and define such laws based on the advantages and disadvantages such laws might have on society. He believes that if a person kills someone, the murderer should be killed too. (Mesbah Yazdi 1388/2009: 87).

Furthermore, fundamentalists argue that slavery and servitude is more or less justified by the Quran, and that the existence of many laws concerning slaves implies the legality/legitimacy of slavery in Islam. Criticizing the fourth article which states that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms, Mesbah argues that one may deserve slavery by his or her misleading thoughts, actions and intentions. For example, slavery may be justified if someone rebels against Islam's true and just system which warrants human salvation. Therefore, in the view of the fundamentalists, the cause of human slavery is not race, color, sex, nationality etc., but hostility towards and conflict with a legal and just Islamic government (ibid.: 167–171). He argues that if such a person was allowed to be free, he may join

Islam's enemies and fight against Islam. But if this person is enslaved and forced to live in an Islamic society, he will gradually be instructed with true pedagogical principles and be led to salvation and eternal happiness. As his argumentation shows, Mesbah does not denounce slavery; indeed, he advocates it depending on definite conditions and situations.

Moreover, according to fundamentalists, Islam regards some wars as permissible and even obligatory. They recognize the legality of war and conflict in definite conditions and do not regard war as unethical and unpleasant. In their opinion, Islam is not against exerting power and military force; it in fact advises and promotes their use in some special situations and circumstances. According to the Islamic judicial order, every Muslim has the right to fight any atheistic and inhumane system with weapons and war, which is regarded as a required and necessary part of human life. Furthermore, Muslims shall treat prisoners of war as slaves in order to secure them from presumable dangers and to convert them to Islam, through good and moral treatment by Muslims (ibid.: 168; 99). Fundamentalists such as Mesbah also accuse those who oppose slavery in Islam as going against Islamic teachings. This is because fundamentalists believe that the best service to Islam is to fulfill Islamic principles, including the fair treatment of slaves, by providing favorable conditions, treating them well and release them. As these are all mentioned in the Quran, to fundamentalists it means that the Quran has progressive rules on slavery (ibid.: 176).

With regard to the fifth article of the UDHR ('no-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'), fundamentalists argue that this article is aimed at proving that some Islamic laws such as whipping the adulterer, cutting the hand of a thief, and the death penalty for the murderer of an innocent human are inhumane and savage. Mesbah argues that the perpetrator him/herself, offending against morality and the law, has humiliated and belittled humanity and hence, according to rational and traditional tenets, deserves appropriate punishment for the unlawful act. According to this view, protecting beliefs and morality are more important than protecting a human being's life. If someone belittles and threatens true beliefs and decent morality the perpetrator has menaced something more valuable than life and thus deserves heavy punishment (ibid.: 93).

Mesbah also criticizes Article 16 which says: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution." He believes that an Islamic government, in order to protect Muslims' spiritual decency, can order its subjects not to marry non-Muslims (ibid.). Moreover, fundamentalists do not accord the same rights to men and women in choosing spouses from other religions. Furthermore, Articles 18 and 19, referring to freedom of thought and conscience without any condition of human responsibility to God, are challenged by fundamentalists by claiming that freedom of religion and freedom to change religion are equivalent to apostasy and heresy and are not acceptable in Islam (ibid.: 95).

Fundamentalists also reject the UDHR because they believe it is an outcome of human reason and does not consider religious teachings. Fundamentalists believe that religion encompasses all sciences that result from human reason, for the revelation is the mother of all sciences. Javadi Amoli (1377/1998) explains that if the UDHR is defined as an outcome of human reason, it is traceable in religious teachings, though usually the sciences as outcomes of rationality and human reason are not regarded as being in accordance with religious knowledge. He criticizes this idea and argues that reason is a religious proof, which verifies the religious precept, and therefore all reason's outcomes, including the natural, human sciences as well as philosophy and mathematics, are subsidiaries of religion.

Javadi Amoli (1377/1998) argues that defining human rights requires a common source which is beyond various customs and rituals generally accepted by all people, regardless of their different traditions and norms, race or color. He claims the common source is provided by divine knowledge, which implies the will of God, who is aware of human nature and good and evil. Therefore, all humans can accept human rights determined by God, as it is in accordance with humanity's essence and true identity. The right of legislation belongs only to God. Non-divine rules are incompetent and incapable in determining human rights. Javadi Amoli further points out that the ideal human rights are defined by Islam, which provides universal guidance for all aspects of human life. Accordingly, he considers that the UDHR was formulated according to traditions and norms, which is merely a contract and lacks philosophical and ethical foundation or recognition.

Fundamentalists, closer to the reformist view claim that some articles of the UDHR were mentioned in Islamic teachings, so that the declaration is not a new concept for Islam. They emphasize that the articles of the UDHR must be debated separately and point out that only a few articles are against Islamic precepts, such as the law of inheritance. In this opinion, Islam respects human rights; hence, Islam is compatible with the UDHR. The concepts and rights mentioned in the UDHR are traceable in the teachings of the prophets, although human beings have not been able to perceive these aspects. There might be other points in religious teachings that human reason may discover in the future (Interview C January 2011). The UDHR was defined after the Second World War, while human rights in Islam were spelled out fourteen centuries ago, when Islam rejected all racial, gender, and geographic discrimination and recognized human rights for human beings. For instance, the right to life as the important human right is respected in Islam and no one is allowed to violate this human right to life (Interview B January 2011).

In the perspective of representatives close to reformism the rights laid out in the UDHR can be categorized into three groups: 1. the rights of individual freedom, such as the right to protect and defend the individual from other humans and states, the right to life, and the right to religious freedom or belief; 2. the rights of political freedom, such as the right to participation in political and social affairs, the freedom of the press, or the right to peaceful assembly and free-

dom of association, and 3. basic social rights, such as the right to work and the right to social security. All these three groups were mentioned to some extent in Islamic teachings. In the International Conference of Muslim Scholars in 1981, it was found that about twenty rights from the UDHR were mentioned in Islamic teachings. The only difference between rights mention in the UDHR and in Islam is that the UDHR was based on an individual-centered approach, while the rights in Islamic teachings were based on a God-centered perspective, which is more comprehensive with regard to human rights (Interview C January 2011).

CEDAW in the fundamentalist perspective

Fundamentalists reject equal rights for men and women. As a result, they are absolutely against the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), while the view closer to the reformist perspective would accept it. However, reformist acceptance is under the condition of a reservation of all Islamic laws related to women's rights. Therefore, it does not seem that accepting the CEDAW brings huge developments in gender equality.

The first fundamentalist representative recognizes the CEDAW as an effort towards considering men and women to be similar, which he believes to be 'unjust'. He argues that justice means everything taking its proper place, and who knows better than God – the creator of human beings – the place of men and women, with their different and specific natures. In his point of view, we are obliged to follow justice. The West tries to provide women with equal rights to men, which he regards as a huge mistake, since from the divine perspective men and women are completely different (Interview A January 2011).

Another group representative (Interview B January 2011) believes that Islam not only respects women's rights, but also allows some privileges for women. For instance, the punishment for apostasy for a woman is being jailed until she repents, while the punishment for a man who commits apostasy is execution. He emphasizes that there is not any discrimination between man and woman. Some cases mentioned in the Quran might seem to be discriminatory, such as the difference in inheritance for men and women; however, such cases have logical justifications that are ultimately in favor of women's rights. Accordingly, in his point of view, ratifying such an international convention is acceptable, though under conditions of the right of reservation to interpret the provisions in the light of Islamic law.

In this view, the articles of CEDAW are restricted because they assess women's rights based on the social requirements of certain groups of people in the West; they do not deal with humanity and humanness. Hence, they are not universal; rather they are about the special interests of a particular confined group. Therefore, the CEDAW needs other agreements in accordance with other cultural circumstances. Nonetheless, this does not lead to rejecting the ratification of the CEDAW (Interview C January 2011). However, ratifying CEDAW requires the right of reservation for Islamic countries in order to respect Islamic

law and the right to refuse those articles against Islamic teachings such as the law of inheritance in Islam (Interview C January 2011).

6.4 Women's Rights in the Fundamentalist Perspective

This section, in investigating the fundamentalist view on the current legal instructions related to women's rights in Iran as Islamic laws, tries to achieve an understanding of different currents of thought on equal access related to gender, and the rules and resources in different realms of life – economic, politic, cultural and family.

Women's rights in the fundamentalist perspective have been defined based on the notion of 'desert-based' justice (Kadivar 2013), originating from Aristotle's idea of distributive justice, which essentially means that individuals receive rewards based on their merits. Such an idea of justice understands inequality among persons as a natural order and people are accorded an unequal share of rights, depending on their merits. Justice in this sense means receiving rewards that are proportionate to one's merit and injustice is receiving more or less than what one actually deserves (Aristotle 2004: 118–120).

This concept of distributive justice is an idea that has been approved and used by Muslims in defining what justice means in Islam. Justice as *putting everything in its place and giving everyone their proper rights* reflects Muslim philosophers' understanding of the Aristotelian notion, which justifies slavery and gender inequality. According to Seyyed Mohammad Hossein Tabataba'i[43], equality resulting from social justice does not mean that all social ranks are distributed evenly among all members of society (Kadivar 2013: 219–222). This notion of justice is the basis for the fundamentalists' perspective on women's rights in Islam. They believe that some verses in the Quran talk of innate characteristics that are present in both men and women. However, they also argue that man and woman are by nature biologically different and thus any action taken against the intention of nature would result in a disaster. As Motahhari argues, this disparity between men and women demands different rights, obligations, duties, and retributions. Only when rights are defined according to this natural order, can natural justice, domestic happiness, and social progress be achieved (Motahhari, cited in Kadivar 2013: 221).

In this section the different categories of women's rights are discussed from the viewpoint of the fundamentalists' perspectives: cultural, economic, politi-

[43] Seyed Mohammad Hossein Tabataba'i (16 March 1903 – 15 November 1981) commonly known as Allameh Tabataba'i was one of the most prominent thinkers of philosophy and contemporary *Shi'a* Islam. He is famous for Tafsir al-Mizan, a twenty-volume work of Quranic exegesis, which he worked on from 1954 until 1972 (Algar 2006).

cal, and women's rights in the family. Fundamentalists emphasize differences and similarities in men and women by defining their rights within the family and in social affairs. It should be noted that these categories must not be taken as separate dimensions, but are in fact linked to each other. As such, some rights do not fall within only one single category.

Cultural dimension

Common traits of men and women

Fundamentalists posit that according to the Quran, man and woman are both human and have common human traits. Thus, in humanity, both men and women are equal. The way to reach perfection in humanity is also the same for both of them. Men and women are similar with regard to faith and belief in God and they have the same responsibilities and duties. Accordingly, on the matter of worship and spiritual transcendence, men and women are not different from each other (Mesbah Yazdi 1388/2009): 181–185; Javadi Amoli (1389/2010): 278.

Different aspects of men and women

In Javadi Amoli's view, every being created by God embodies God's various characteristics. The different traits of men and women imply the different characteristics of God. To emphasize this point, fundamentalists refer to a quotation from the Imam Ali (the first Imam in *Shi'a* and the fourth Caliph in *Sunni*): "the wisdom of women is in their beauty and the beauty of men is in their wisdom" (Javadi Amoli 1389/2010). He explains that such divergence does not mean that there are two kinds of human beings. Rather this difference means that women express reason and wisdom through compassionate sympathy, eloquence and quality of speech, purity of deed, manner of greeting, etc. Men on the other hand exhibit intellect and rational reasoning. Such difference does not mean one is superior over the other, or makes one better than the other. It simply means that both man and woman embody different characteristics of God (ibid.: 33–4). Accordingly, he argues that these differences represent both God's wrath and compassion. God's wrath is associated with man's behavior while his compassion is attributed to woman's behavior. Man and woman complement each other in that wrath and compassion are both necessary in life (ibid.: 206–8).

Rational difference between man and woman:

Javadi Amoli identifies two kinds of wisdom – wisdom that is necessary for social life and wisdom that allows humans to become closer to God. He believes that men and women have unequal wisdom in terms of social life. This means that men have more capacity to manage political and social affairs. Yet this does not mean that man is more virtuous or more God-like. Neither does it mean that

man is superior to woman. These differences do not have heavenly advantages or disadvantages. In the afterlife, these ideas of superiorities have no credit; these intellectual tools have no use (Ibid.: 228–230). According to Javadi Amoli, to become closer to God, intellect must be bound to the way of the heart. He attributes the heart to emotions and feelings, which he claims to be more pronounced in women than in men. He notes that when women cry, it cleanses and purifies their heart, therefore bringing them closer to God (ibid.: 220–222; 153–154).

Physical difference between men and women

Mesbah Yazdi (1388/2009) distinguishes men from women by their physical and spiritual aspects. In terms of the physical, he talks about women's menstrual cycle, which makes them weak and frail. Within this cycle, it is necessary for them to have more rest. This condition results in particular distinctions in the social roles and expectations of men and women, and in turn becomes the basis for their rights in family life.

Mesbah also points out differences in terms of their sex organs. He explains that when women are pregnant or lactating, their sex organ is inactive while men's sex organ is active all the time. This makes the function of each sex organ very different from each other. As such, bio-psychological aspects from these differences should be considered when making laws. For instance, such aspects justify men's right to polygamy and temporary marriage during times that the wife is not able to meet his sexual needs (Mesbah Yazdi 1388/2009: 215–216).

Another physical or natural difference between men and women, according to Mesbah, is the size of their brains. He said that compared to men, women's brains are smaller, which explains differences in cognitive abilities. He claims that differences in cognitive abilities mean that women are less rational and logical than men. For example, women have lower IQs than men (ibid.: 226–227).

Psychological differences

According to Mesbah, the most striking psychological difference between men and women is women's weakness in reasoning and logical thinking, as above. However, he claims that this weakness is not necessarily a bad quality, because it makes women more able to perform domestic duties and responsibilities (ibid.: 218).

He further explains that another psychological difference between men and women is how women want to be loved while men tend to love. He posits that women's need to be attractive to men, for example by wearing make-up, is a way for them to seduce and lure men to fall in love with them. He also believes that women seek the protection of men because it is more natural for men to provide such protection. Once again, these traits are important in the family, entailing different duties and rights for men and women (ibid.: 219–220).

Education and knowledge acquisition

Javadi Amoli explains that women have the right to education and must be permitted at all times to acquire religious knowledge. However, her husband can prevent her from obtaining further education in other fields when he feels that such education is not necessary, and is against the family interest (Javadi Amoli 1389/2010: 310–311).

Special advantage of women in Islam

Javadi Amoli explains that the responsibility of women to bear children and become mothers is a special privilege that God has given to women. Another privilege is how women mature earlier than men. This means that they are accepted to the divine realm six years earlier because they are now able to perform religious duties (ibid.: 338–339).

Veil *(Hijab)*

The veil, according to Mesbah (1388/2009), is necessary to temper the sexual desire of men towards women. This allows men to maintain their loyalty to their wives and avoid betrayal of their family (Javadi Amoli 1389/2010:310–11). Refusal to wear the veil is a violation of God's right. Javadi Amoli argues: "Woman should completely understand that her veil is not only for herself so that she cannot say: I want to give up my right" (ibid.: 351). He explains that when the Quran's speaks of the veil, it means that the veil is a means to respect and revere women, meaning that men should not look at them maliciously. This does not apply to non-Muslim women because non-Muslim women are deprived of this reverence. He argues that the veil should not be regarded as a limitation since the Quran propounds that veiled women are an embodiment of reverence and the grace of society and therefore, they are honorable (ibid.: 350–352).

In reference to veiling, the representative closer to a reformist standpoint (Interview B January 2011) explains that in Islam there are some reasons for the regulations of the practice, including the necessity for women to have a cover to protect her from the contaminated looks of men. Therefore, the veil protects women in society. Furthermore, it protects society from decadence and immorality. The veil also fences the dignity and reverence of woman. Similarly, every decent person, regardless of their religion or culture, does not appear in public with every kind of covering. The form of veiling must be in accordance to the norms of each society.

Veiling is necessary to protect the chastity and social propriety which must be respected by both men and women, since chastity is acceptable by human nature and natural disposition, just as nudity is against human nature. However, the definition of chastity changes in different epochs and spaces (Interview C January 2011). A man's dress code is different from a woman's dress code, so that covering the head and face is not necessary for men but is necessary for women, and the woman must cover her adornments by veiling (Interview C January 2011).

Women's rights in the family

The importance of women's role in the family

In the fundamentalist approach, the importance of women in society is expressed through the crucial role of women in the family as wife and mother, since the prosperity of society depends on the happiness and prosperity of families. As Javadi Amoli (1389/2010) explains, intimacy between husband and wife, as well as cooperation and friendly relations within the family, results in a healthy society and is only established because of the role of women in the family.

Kindness, forgiveness and devotion among family members are the manifestation of motherhood; though the father, according to Javadi Amoli, is responsible for the administrative and executive affairs of the family. This is reflected in the Quran (4:34) which says men are superior to women. However he argues that the foundation of the family is loyalty, kindness and solicitude and this is the duty of the mother because she unites both her and her husband's families.

In such a family, the man is responsible for meeting the needs of family members and protecting them while the woman is responsible for the good treatment of her husband, supporting the family, taking on the responsibilities of home, protecting children and property and honor. Therefore, there is a mutual responsibility between wife and husband within family boundaries (Javadi Amoli 1389/2010: 173; 39–40).

Similarly, Mesbah Yazdi (1388/2009) also emphasizes the ideal order of family in which the woman is responsible for feeding infants, babysitting and housekeeping and it is man's duty to provide for the expenses of all family members. Thus, society should provide favorable conditions so that husband and wife can perform their respective duties and responsibilities. He emphasizes that, notwithstanding this fact, housekeeping almost in all societies is a woman's duty, while in Islam a woman is not obliged to do it and she can receive payment for doing any housekeeping and even for feeding the baby (Mesbah Yazdi (1388/2009): 24).

Guardianship and superiority of men over women

The Quran accords guardianship over women to men (4:34) as the heads of families, who are therefore more capable of providing. Javadi Amoli (1389/2010) emphasizes a few points about this verse. First, he confines this superiority only to the terms of the relationship between a wife and her husband. Secondly, this superiority does not indicate perfection and being closer to God, rather it is a form of responsibility and labor division. This does not mean that men are more virtuous. The essence of this superiority is one's duty towards others. It is in this sense that men are responsible for their wives and families (Javadi Amoli 1389/2010: 325–326). Mesbah argues that because men have more intelligence, they are responsible for the expenses of the family and consequently they are more meritorious and befitting the managment of the family (Mesbah Yazdi 1388/2009: 241).

The head of the family is based on the Quran (4:34) saying 'Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth.' This verse does not mention a precept and a decree, but is rather a description taken from the contemporary situation in the Prophet's society. This does not mean that women are not able to manage family or society; but the role of head of family or society is granted only to men (Interview B January 2011).

Inheritance law

Javadi Amoli (1389/2010) argues that a criterion for women's inheritance is to be found in the Quran, which states that men's share is twofold of women's. He argues that since men have the responsibility of providing for the family and for women's life expenses; and also having to pay dowry, their greater inheritance should be considered as compensation for this inequality (Javadi Amoli 1389/2010: 343; Mesbah Yazdi 1388/2009: 240; Interview B January 2011; Interview C January 2011). This view also regards a marriage without a dowry as invalid and void. The dowry should not be considered as a deal, but is symbolic respect for the woman and should be considered as a gift to honor her with. Furthermore, if the shares of men and women are equal, half of society's economic and financial capital will remain useless and stagnant, because as Mesbah argues, women can never be as economically active as men, though they can enjoy the benefits derived from the capital inherited by the men. Men are producers and women are consumers (Mesbah Yazdi 1388/2009: 268). Men are obliged to take responsibility to cover the family expenses, because even if the woman works, what she earns belongs to her alone and she has no responsibility for family expenses. Therefore, according to Islamic doctrine, the tedious and exhausting effort to earn is relegated to men and this is a rule in Islam. In practice, it is possible that a woman manages the family in the economic sense and this is not forbidden in Islam, but legally it is defined as a man's obligation. Considering such arguments, the inheritance law in Islam is just and fair (Interview B January 2011).

Javadi Amoli also argues that inequality in inheritance law does not imply that women are of lesser value because they have a lesser share than men. This is because the criteria for value is not to be found in wealth and affluence. Wealth is only of economic importance and does not have value in the afterlife (Javadi Amoli 1389/2010: 341). The inheritance law is a constant and unchangeable precept of Islam, since the Quran mentions a clear and permanent law on this subject (Interview B and Interview C January 2011).

Right to divorce

Fundamentalists believe that the family should be honored and therefore they provide very strict conditions for divorce. In Islam, women do not have the right to divorce, while this right is granted completely to men. However, it is possi-

ble for women to obtain this right if and when the husband agrees to grant the woman the option to divorce in their marriage contract (Javadi Amoli 1389/2010: 175; Mesbah Yazdi 1388/2009: 241, Interview B and C January 2011).

Polygamy and temporary marriage

According to Mesbah Yazdi (1388/2009) physical differences between men and women, particularly differences in terms of their sex organs and related bio-psychological aspects, justify men's right to polygamy and temporary marriage.

The view closer to reformism (Interview B January 2011) considers the majority of Islamic precepts related to women as confirmative rules which refer to old traditions and customs practiced before the revelation, and which were later adapted into Islamic precepts during Muhammad's time. Therefore, the confirmative precepts can be changed to adapt to the current conditions of society. Polygamy, according to this view, belongs to such Islamic precepts, and is practicable so long as the first wife is not displeased. But because today all women would be essentially displeased to see her husband with another woman, it is not acceptable. Polygamy is also allowed in Quran, although under the condition that the man can ensure justice among the wives, otherwise he is not allowed to practice polygamy. It should be noted that some verses of the Quran refer to the personal obligations of human beings to God (such as those verses related to worship) and others are addressed to the entire society and are considered as social rules. He recognizes that polygamy falls under the second group and explains that a further marriage requires a court's permission after the man proves his ability to fulfill justice in financial and emotional issues between his wives. Temporary marriage in this view is only for exceptional cases such as times of travel, where the man has no access to his wife. In order to satisfy his sexual needs, he can marry a woman for a short time. Temporary marriage in these circumstances, however, is not valid for a woman, though she can marry temporarily. It means that if a woman needs to satisfy her sexual instinct and has no access to her husband, she must first get divorced in order to be able to get temporarily married (Interview B January 2011).

Polygamy is rejected by some representatives close to a reformist position; they emphasize the 'indecent' face of polygamy in the current epoch and consider it as an injustice (Interview C January 2011).

Women's civil, social and economic rights

According to a fundamentalist point of view, women's right to political participation can be explained through arguments about their capacity for political and religious leadership. Javadi Amoli (1389/2010) argues that there are two kinds of revelation: legislative revelation and informative revelation. He explains their difference from the Quran's view. The Quran has assigned legislative revelation

to men and Javadi Amoli interprets this as the 'responsibility of being a Prophet,' which according to the Quran (21:7) is accorded to men because it is an administrative issue dealing with relations between people, leadership in war and peace, receiving financial budgets and regulating them, distribution of properties and adjusting people's affairs. On the other hand, informative prophecy means to know the events taking place in the world, what the future of the world might be and to know one's own future and that of others. According to Javadi Amoli, this kind of prophecy comes from the Divine and is a support for legislative prophecy and administrative responsibility. This is not confined to men, and women can achieve this position and rank as well (Javadi Amoli 1389/2010: 129–130).

Another remarkable point here is women's capacity to be God's regent. Javadi Amoli says that being God's regent has nothing to do with gender. Being a man is only relevant in administrative affairs (ibid.: 162–3), as dictated by legislative revelation. He does not argue against women's right to participate in political, economic, and cultural affairs, because the time of legislative revelation is over, with Muhammad being the last prophet. Therefore, women have the right to participate in social, political and economic fields provided that both men and women follow specific conditions. First, they must perform their responsibilities without physical contact. Secondly, according to Javadi Amoli, executive responsibilities are distributed fairly according to each man and each woman's intelligence, capabilities, and characteristics, considering the fact that men have more executive responsibility (ibid.: 143–144). Mesbah also admits that in Islam women's right to participate in political and social activities are recognized as they are members of society. However, their physical and psychological capacities must be considered in appointing their positions or when granting them responsibilities (Mesbah Yazdi 1388/2009: 186).

Women's judgment

According to Mesbah Yazdi (1388/2009) and Javadi Amoli (1389/2010), some Islamic jurists believe that being male is not a requirement for being appointed as a judge in Islamic courts. However, in the Shiite tradition, being male *is* a necessary condition. Having scrutinized various traditions in this regard, Javadi Amoli explains that some difficult responsibilities are obligatory for men but women do not have to take them. In other words, accepting the responsibility of being a judge is obligatory for men but not for women. Furthermore, being a judge in an Islamic court entails a responsibility to execute legislative punishments. Thus, women can train students, hear trials and conduct consultations among other judges about the cases but have no right to decide on the final sentence (Javadi Amoli 1389/2010: 299–304; Mesbah Yazdi 1388/2009: 229).

However, in the views closer to reformism (Interview B and C January 2011), there is no prohibition in Islamic doctrine for women to take executive tasks in society, such as becoming a judge or president. Gender is not a criterion for commitment to such activities.

Blood money

Javadi Amoli believes that in Islam, blood money is not based on a human being's spiritual value; rather it is based on their economic contribution. Therefore, because man is the breadwinner, his blood money will be of greater value than that of a woman. The difference between the blood money of men and women does not add anything to men's status and does not lessen the value of women, because some material and financial differences have no relation to spiritual status. There is no rational or traditional correlation between blood money and spiritual perfection, so it cannot be said that the higher the amount of blood money, the more sacred is the soul of the murdered person or the closer he is to God (Javadi Amoli 1389/2010: 345–348).

Closer to reformism (Interview B January 2011), evidence in the Quran that defines unequal blood money for man and woman is not recognized. The Quran's reference to this subject refers to the necessity of paying blood money and it does not mention the specific amount. Therefore, the argument that since the man is economically responsible for the family, his blood money should be more than woman is rejected and since there is not any difference between the life of a man and a woman, blood money must be therefore be equal (Interview B January 2011). The amount is not fixed and can be variable based on the amount of injury. Furthermore, considering the different social circumstances in contemporary society in which women have a more significant role in economic affairs, the law of blood money must be revised and determined regardless of gender (Interview C January 2011).

Women's testimony

Mesbah Yazdi (1388/2009) explains that there are two requirements for witnessing: firstly, the witness should be alert and clever in the instance of observing an event and he or she should be able to record the event exactly and with accuracy. Secondly, the witness should not be affected by emotions and passions at the time of testifying and must be able to explain what has been witnessed correctly and completely. Comparing the perceived traits of men and women, Mesbah comes to the conclusion that men are more capable and meritorious with regard to both of the aforementioned aspects. When there is no possibility of a man's attestation, a woman's witnessing should be credited. In this case, because of the possibility of forgetting the event or being under effect of emotions and passions, a woman should be accompanied by another woman in order to lessen the inaccuracy of her attestation as much as possible (Mesbah Yazdi 1388/2009: 253–254).

Javadi Amoli (1389/2010) believes that the Quran (2:282) also makes a comment about the credibility of women when it says that the testimony of two women is equal to one man's. This is not because of a deficiency in women's wisdom or a possibility of flaw and fault in recognition, but due to the fact that if one of them made a mistake, the other one will correct her. According to Javadi Amoli, women's domestic and child care responsibilities restrict their ability

to observe and remember what they have witnessed. As such it is necessary to have two women so that if one forgets the other will remind her (Javadi Amoli 1389/2010: 344–345).

Women and Jihad

Javadi Amoli (1389/2010) believes that if a country is at war and is threatened by foreigners, women should also defend their country, which requires military training. In such circumstances, women are required to participate in *jihad* alongside men. Women are allowed and sometimes obligated to serve as leaders during war, because defense is not restricted to men. Whenever defense is necessary, women are supposed to support men either as combatants or as service providers (Jibid.: 314).

Women's economic rights

Regarding women's economic rights, Javadi Amoli explains that the Quran recognizes women's economic affairs as independent from that of men, pointing out that it emphasizes that everyone has their own business, and that men and women are economically independent of each other: "To men is allotted what they earn, and to women what they earn" (Quran 4:32) (ibid.: 292–293). Javadi Amoli also says that the superiority and guardianship of men over women in a family is not a changeable rule, but if a woman is competent in managing her economic affairs, she can come to a compromise with the man and protect her economic independence under specific conditions in a marriage contract (ibid.: 327).

Conclusion

The theoretical model outlined in the chapter on theory can be used to analyze four points of the fundamentalist perspective. The first refers to the dialectical relationship between the individual and structure in general, and particularly the dialectical relationship between human reason and religion as an element of structure. Such a dialectical relationship, as discussed in the chapter on the theoretical framework, is recognized as a prerequisite for the modern society. Secondly, the theoretical model argued that in case of failure of the dialectical relationship between the structure and the individual, objectified meaning and the value system presented by religion becomes incompatible with subjective meaning and the value system at the individual level. This incompatibility results in the crisis of meaning in modern society. The third point focuses on the notion of justice in the dialectical relationship between the structure and the individual, which explicates the participatory parity of individuals including men and women in rules and resources in different political, cultural and economic dimensions, as well as the basis of the relationship between men and women in

the family, if it is characterized by equality and partnership instead of paternalism and authority. And finally, the fourth point recognizes the UDHR and CEDAW as setting global criteria for justice and equal access to rules and resources for both men and women. In the following, these four points shall be argued from a fundamentalist approach.

Dialectical relationship between structure and individual (religion and human reason)

According to fundamentalism, human reason is considered as a subset of revelation without independent authority. As a result, the dialectical relationship between religion and human reason, in the broader sense between structure and individual, cannot be constituted, for human reason is considered a part of revelation and the dialectical relationship between two elements is only possible when two factors are independent from each other. Human reason is not qualified to impact revelation in this view.

Crisis of meaning

Since in modern society religion is not the single presenter of meaning and the center of the value system, it is possible that the subjective meaning differs from the objectified meaning; in other words, the individual value system diverges from the value systems offered by religion. For instance, the individual value system tends to esteem human dignity through a notion of egalitarian justice, which emphasizes participatory parity in resources and rules of all cultural, political, economic dimensions, especially regarding gender and the relation based on equality and partnership in the family. In contrast, the value system presented by religion is based on desert-based justice and natural differences between men and women. Therefore, an individual meaning system based on egalitarian notions of justice is not equivalent to the value system presented by the fundamentalist view. The value system in the fundamentalist perspective might provide a religious life, though it is incompatible with subjective meaning and values. It leads ultimately to a crisis of meaning, not only for the individual but also for religion as well. In reaction to this crisis, fundamentalism tries to impose its value system onto other sources of value systems. It also tries to negate other meaning and value systems using different methods, for instance through restricting cultural communication, or implementing harsh and unacceptable penalties for dissidence, such as the death penalty for apostasy[44]. In its radical form

[44] For example, the case of Raif Badawi (born 1984), a Saudi Arabian writer and activist who was found guilty of offences related to his blog, the Saudi Free Liberals Forum, as well as accusations that he insulted Islam.He was sentenced to 1000 lashes to be administered at a rate of 50 a week over 20 weeks and 10 years in prison. He also received a fine of 1 million riyal (equal to about $267,000). Available at: (http://www.theguardian.com/world/2015/jan/17/saudi-blogger-raif-badawi-global-pressure-release)

it might lead to legitimize terrorism in the extreme fundamentalist view. Here, it seems that religion loses its essence and its essential message to respect and love humanity and human dignity, in order to retain its old authority.

Justice as participatory parity for men and women in political, cultural and economic dimensions and in the family

The fundamentalist meaning and value system emphasizes desert-based justice, based on which it does not recognize participatory parity for men and women in rules and resources; hence this view would not be able to provide opportunities and social or political arrangements to encourage the flourishing of a 'truly human life' for both women and men that is considered appropriate to human dignity.

To achieve a better understanding of the notion of justice applied in the fundamentalist view and its difference to justice as participatory parity, two points will be explained in the following section. These points include the notion of justice and the debate on natural differences between men and women.

The notion of justice

Although in both the Quran and *sunna* some acts were recommended as forms of justice and some were prohibited as unjust and cruel, there are not any specific measures and final definitions of justice in enough philosophical detail to indicate the constituent elements of justice, or the necessary conditions for the realization of justice. Nonetheless, justice, being just and efforts to fulfill justice were recommended to believers in the Quran and the tradition (Rosen 2000: 154). For example, *O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness* (Quran 5:8). *Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice* (Quran 4:58). The concept is so important that even the aim of prophets and religion is the fulfillment of justice: *Allah sent the prophets as bringers of good tidings and warners and sent down with them the Scripture in truth to judge between the people concerning that in which they differed* (Quran 2:214).

Therefore, what is recommended in the Quran is a moral and ethical definition rather than a philosophical definition of justice (Mojtahed Shabestari 1387/2008). The philosophical definition does not have a divine resource, but rather can be traced back to ancient Greece. It should be noted that the impact of Greek philosophy on Islamic scholars has a long history, from the translation movement over a period of the Abbasid Caliphate between 750 and 1150 CE, which started in Baghdad with the translation of major scientific works in philosophy, medicine, and mathematics from languages such as Greek and Sanskrit into Arabic (Rababah 2015). Therefore, the influence of Greek thought, espe-

cially that of Socrates, Plato and Aristotle, on Islamic thought has been obvious. As a result, the philosophy of such notions as desert-based justice did not originate from religion. The Quran did not present a certain concrete definition of justice; but devolved full responsibility for defining the notion of justice in every epoch to human beings, based on their perceptions of justice, as well as the circumstances and needs of every age. Thus, justifying discriminatory laws against women through a definite notion of justice with a background of classical Greek philosophy does not relate directly to Islamic teachings, especially in applying desert-based justice to explainations of gender inequality in the discourse of contemporary Islamic thought. Regardless of critiques and challenges to the notion of desert-based justice mentioned by modern thinkers, this indicates the unresponsiveness of contemporary Islamic thinkers to the current debates on such philosophical subjects. It also shows fundamentalists' inattention and ignorance of other philosophical debates which arose after classical Greek philosophy.

Proponents of desert-based justice argue that equal persons must be treated equally and are entitled to equal rights, but unequal persons must be treated based on their desert. This perspective is close to one of Aristotle's definitions of justice, in which he states that since persons are unequal by nature; natural justice requires a concept of geometrical distribution in which unequal persons receive unequal shares. This notion of justice is also known as distributive justice and 'proportional equality'. However, it does not explain what constitutes merit or desert and who merits a share in the rule (Mathie 1987: 66, quoted in Ward 2010: 2).

In fact, various concepts of justice are discussed by Aristotle in the fifth book of the *Nicomachean Ethics*. Since 'unjust' means either lawless or unfair, as Aristotle states, 'just' means either lawful or fair. He furthermore distinguishes 'universal justice' from 'particular justice'. The former refers to lawful behavior in general and implicates complete virtue, since it can be exercised in relation to another person and secures advantages for another person (Aristotle 2004: 115). Justice differs from virtue in its relation to somebody else, while virtue only deals with the moral state of one individual. Particular justice is considered as fairness and equality and is a virtue of character like other moral virtues, such as courage, honesty, etc (Leontsini 2015: 28). Particular justice is either distributive or rectifying. Distributive justice deals with the fair distribution of benefits and burdens and ensures that everyone receives their fair share of goods. In other words, each person gets what he or she deserves by means of the so-called 'geometrical proportion', which stands for a just distribution of goods between persons. "It means geometrical proportion in distribution prioritizes the evaluation of persons rather than shares, and assumes that persons are unequal" (Ward 2010: 4).

Just rectification restores a balance for unequal distributions between two parties. It is based on an 'arithmetical' proportion, since "[o]nly when the whole has been divided into two equal parts can a man say that he has what is proper-

ly his" (Aristotle, quoted in Ward 2010: 5). The arithmetical proportion is based on the evaluation of shares rather than persons. In this view, all persons are considered equal rather than unequal. Here, fairness also means that everyone receives what he deserves, but according to this perspective, all persons are and deserve the same (ibid.).

Political justice is another concept of justice discussed by Aristotle. It "obtains between those who share a life for the satisfaction of their needs as persons free and equal, either arithmetically or proportionately" (Aristotle 2004: 129). As Ward (2010) explains, "political justice is based on 'rule of reason' and rule of law upheld by ruling and being ruled in turn by equal citizens who, recognizing each other as equals, accept equal shares of good things for themselves" (p: 6). Political justice can be based on natural law or particular legal law. Whereas natural law is the same everywhere, legal law is man-made and varies in different places according to particular circumstances (Aristotle 2004: 130–131). Law is universal, but since there are certain aspects that cannot be rightly articulated in general terms, law takes account of the majority of cases. Therefore, law states a general rule, but some exceptional cases might arise. In such cases, equity is a rectification of law in so far as law is defective on account of its generality (ibid.:140–41). Therefore, the law by its nature is universal, as Aristotle states, and it applies equally for everyone. It means 'equality before the law', which implicates that the persons who come before it are the same rather than different. The rule of law, and consequently political justice, tends to apply rather an arithmetical form of equality that assumes that persons are the same (Ward 2010: 7).

Accordingly, distributive justice is only one kind of justice discussed by Aristotle; although it provides a definition of desert-based justice among Muslim philosophers, which is used to justify slavery and gender inequality.[45] But also, since it is based on the state of nature and natural bodies, and physical and mental differences, it cannot bring justice for people with serious physical and mental disabilities (Nussbaum 2009: 121).

On another point, all religions including Islamic streams of thought, emphasize human dignity for every person, even though such a definition of justice based on the state of nature is inconsistent with human dignity. Although, the notion of 'inherent dignity' is not mentioned in the Quran, some verses imply the notion. For instance, verses on the creation of human beings indicate equality in creation: *O mankind! We created you from a single [pair] of a male and a female, and made you into nations and tribes, that ye may know each other, not that ye may despise [each other]* (Quran 49:13). Furthermore, *We have certain-*

[45] Also Aristotle's aristocratic bias excludes women, slaves and craftsmen from citizenship. Women are, in his writing on biology, "a deformity, though one which occurs in the ordinary course of nature," and that their very existence is due only to the need for men to be reproduced sexually, so that their (superior) form can be kept separate from their (inferior) matter (Okin 1989:54)

ly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what we have created, with [definite] preference (Quran 17:70). Therefore, gender, race, status and power do not produce dignity (Kadivar 2013: 215). On this account, many Islamic thinkers believe that the Quran recognizes human dignity for all human beings by referring to the children of Adam rather than only to believers or Muslims (Alousi; Ebn Ashur; Tabataba'i; cited in Ayazi 2012).

But the question here is how human dignity can be respected and maintained in a society. From a religious perspective, human dignity can be maintained through spirituality and righteousness. Even so, spirituality and righteousness require justice, a sense of security in economic needs and social comfort as well as the right to determine destiny through participation in political affairs. Therefore, social, economic, political, and even cultural factors are of utmost importance in constituting an environment that provides the social freedom necessary for inner freedom and spirituality.

Also from a non-religious perspective, dignity is an obscure notion that should be considered with interrelated notions of 'respect', and 'justice.' As John Rawls (in Nussbaum 2009) describes, it has no obvious content of its own, though essentially it is the worthiness of a living person. Therefore, all human beings are common in an inherent dignity that deserves respect from laws and social institutions, and they require a political arrangement to provide every person with life circumstances that ensure their lives flourish as appropriate to human dignity (Nussbaum 2009: 117–130; Nussbaum 2001:81; Nussbaum 1999: 234).

The cultural and social patterns of representation, interpretation, and communication, which consider biological differences as a basis for different emotional and rational faculties, and accordingly define proportional access to social and political and economic resources based on such differences, cannot provide opportunities for women to flourish in a truly human life. Furthermore, institutionalizing such interpretations into popular culture as well as in law and social institutions and patterns of everyday interactions prevent women from participatory parity in different cultural, economic and political resources, and positions women as minors who are in need of tutelage and guardianship, rather as human beings with free will and authority. Such interpretations are inconsistent with equal human dignity for all human beings. Therefore, they violate justice, respect and human dignity.

This is all a result of a certain human definition and interpretation of justice – which is not related to a divine definition of justice – as well as its failure to provide any practical approach to respecting and maintaining human dignity (equally for men and women) in society. It is therefore vital to revise the definition of justice and to present a decent definition proper to human dignity for all human beings, which is compatible with human nature – not masculine nature in the discourse of patriarchy. It would not be necessarily contrary to religious teaching, but more consistent with the fulfillment of justice as the aim of religion. Such a new definition of justice would lead to a new attitude to the UDHR and

the CEDAW as practical endeavors to respect and maintain human dignity and as cosmopolitan norms for justice.

Natural differences between men and women

The dominant argument for defining rights for women in the fundamentalist perspective, as Tabataba'i reasons, is:

> Biologically, the average woman is inferior to the average man in brainpower, heart, veins and nerves, let alone height and weight. For this reason, women's bodies are softer and weaker and men's rougher and physically stronger; and women have gentler feelings such as love and tenderness and a greater interest in beauty and self-adornment, while men are more rational than women. Thus, women's life is emotional and men's life is rational. In Islam, the difference in social duties and obligations [of men and women] is due to their different emotional and rational faculties. For example, men are specialists in politics, law and warfare, where rationality plays a greater role, while women specialize in raising children and managing the household… Consequently, men have overall control because of their rationality, while women get more assistance because of their emotional advantages (cited in Kadivar 2013: 219–220).

Such views on gender differences are not mentioned in the Quran and of course are not restricted to the Islamic fundamentalist perspective; rather, it is a general debate with a long history that did not originate from a specific religion. Several publications from the field of popular psychology mention that women and men are naturally opposed to each other in thinking, emotions and communication. For example, the book *Men Are from Mars, Women Are from Venus* which has sold more than 30 million copies and been translated into fourty languages, or the endless stream of articles on this subject in popular magazines all over the world, though most of their claims are clearly refuted by massive amounts of research (Connell 2015: 33). Therefore, attention to the current debates on sex differences and gender studies by fundamentalists and their contribution to such discussions from a religious view help them to protect their religion from refutable opinions perpetuated by pop psychology.

The various theories on the origins of sex differences can be categorized into three groups. First, biologically-oriented theories consider "the body as a machine that manufactures gender difference" (Connell 2015:36). Within this group, evolutionary psychology applies evolutionary principles especially concerning sexual selection pressures. Evolutionary psychologists believe that current gender differences "originated from successful ancestral adaptation to the different reproductive demands faced by men and women" (Bussey and Bandura 1999). Women, based on this model, invested more in offspring, were choosier than men about potential mates, adapted to their greater imposed role in reproduction and parenting, and competed with other women to attract long-term

partners who provide needs for their life and for their children. Men competed with other men for sexual access to women and tended towards more aggression, competition, and risk taking, controlling women's sexuality and matin with many females (ibid.; Wood and Eagly 2002: 700). The features of sex-differentiated social behavior described in this theory seem to be similar to the fundamentalist view of gender difference. However, the argument based on evolutionary principles and assumptions about sexual selection pressures and in general the theory of evolution has been unacceptable and rejected by the streams of Islamic thought, including fundamentalism.

The counterpoints of biological theory are the sociological theories that consider the body "as a kind of canvas on which culture paints images of womanhood and manhood" (Connell 2015: 38). Therefore, gender is a social construction, marked by the peculiarities of each culture.

This approach has been applied in different fields of human science. For psychological constructionists, the gender system is a product of relations between people and their language for describing their world. They show how the social understanding of gender inequality is a gestalt determined by social inequalities inherent in the language (e.g., use of male pronouns as generic) (Wood and Eagly 2002: 700). Also cultural studies influenced by Michel Foucault elaborate "how modern systems of knowledge had come to sort people into categories, and how these categories were interwoven with techniques of social discipline that police their bodies"; therefore they consider "bodies as the product of disciplinary practices. Bodies are 'docile' and biology bends to the hurricane of social discipline" (Connell 2015: 38). As Connell states, the docility of bodies are overstated in such post-structuralist research. Instead, bodies are active in social processes, for example, through seeking pleasure, experience, and shaping courses of social conduct (ibid.: 39).

In sociology, social constructionists explain that sex-differentiated behavior is determined by taking over social roles in terms of their presumed 'sex roles' as man or woman, which functions in terms of a sexual division of labor – i.e., domestic work for women – and gender hierarchy (Eckes and Trautner 2012: 23). However, it is not clear why the sex role of a man is more highly esteemed than that of a woman (Connell 2015: 41). As explained by West and Zimmerman (1987) in their article *Doing Gender*, gender is generated in routine interactions where men and women learn to display a set of sex-typed behavior in their social interactions (Connell 2015: 73; Wood and Eagly 2002: 700).

The third theoretical group suggests considering gender differences from both the biological and social context in which men and women live (Wood and Eagly 1999). Similar to social constructionism, this biosocial approach emphasizes 'sex roles' within a social context. The problem, as Connell posits, is that these two realms are not comparable and it is very possible to run the risk of giving priority to biological explanations, to the extent of collapsing back into a biological dichotomy (Connell 2015: 41).

This idea of 'character dichotomy' (Connell 2015) emphasizes differences between two concepts when they are sharply distinguished or opposed. In pop psychology, also based on character dichotomy, one set of traits is defined for women and another set for men. As a result, most research on this subject focuses on gender differences. But the remarkable point is that applying a new statistical procedure, known as 'meta-analysis'[46], for gender difference research reveals that "across a wide range of the traits and characteristics measured by psychology, sharp gender differences are rare. Broad similarity between women and men is the main pattern" (ibid.: 46–47). Another point that the research shows is that psychological gender differences are not fixed, but rather they change over time. They can be "created, erased, or reversed, depending on the context" (Hyde 2005: 589, cited in Connell 2015: 46). However, attention to similarities does not mean to deny the differences. All human bodies around the world are different from each other in physical ability and disability, being old or young, sick or well, and they change through growing older, and coming across various events during their path of life. As Connell argues, it is not sufficient to apply a 'difference' framework, but another framework is required which focuses on relations. Gender is also a system of social relations within which individuals act and their bodies become interconnected through social practices. It is a social embodiment, which expresses the relation between bodies and is subject to historical process, hence it changes and can never be fixed (Connell 2015).

But it seems obvious that gender as a system of social relations cannot rely on difference and dichotomy systems in order to set forth human dignity, but rather it obstructs legal-cultural recognition, which prevents human beings from interacting on terms of parity in cultural and social patterns of representation, interpretation, and communication due to their gender. This is not restricted to a cultural dimension but it also permeates political and economic dimensions and prevents human beings from participating in all three dimensions of culture, economics and politics, leading to injustice.

Perhaps differences and dichotomy systems alongside the notion of desert-based justice were once rational and acceptable, but today there is a need to move towards an egalitarian notion of justice based on human dignity, which is due to new social relations including gender, and is based on human dignity. This seems to be a prerequisite to creating a world based on love for human dignity and humanity that provides all human beings, regardless of differences in race, nationality, religion, ethnicity, culture, gender, physical and mental ability and disability, with life circumstances to enable them to lead flourishing human lives appropriate to human dignity. Assuredly, the purpose of religion could not exclude this.

[46] Meta-analysis summarizes and compares results from separate studies on the same issue to reach a statistical analysis of the whole set of studies (See: Card 2012).

UDHR and CEDAW as global criteria for justice

Of course, there is no place to speak of the UDHR and CEDAW in a fundamentalist point of view, since they believe that all human and women's rights were defined by God, and they do not admit any rules on these subjects written by human beings. However, moderate fundamentalists pay attention to such international conventions and declarations in order to present the rational face of Islam, although concepts such as gender equality, justice and human dignity still need to be debated more thoroughly.

7 Gender Norms Between Revelation und Human Reason in the Reformist Perspective

The reformist-oriented thought stream is often defined as a response to modernization and globalization. Though, it should be noted that several of the core issues mentioned by reformists have a longer history. For instance, "the debate on the relationship of revelation and reason did not begin in the Muslim world with the rise of modern science and the impact of Enlightenment thinking from the West" (Clarke 2006: 165). The thought pattern of reformist discourse can be traced back to Islam's early history and the *Mu'tazili*. They were influenced by classical Greek philosophy that recognized reason as the capacity to understand the goodness of justice and the evil of injustice independent from revelation. They also recognized that justice is defined by sources outside of religion based on rational thought. Hence, whatever reason finds just should also be religiously obligatory, and whatever reason finds unjust should be religiously prohibited. Therefore, whatever reason rules, the *Sharia* will also uphold. *Mu'tazili* did not gain the same support as the *Ash'ari* school, which was based on the fallibility of reason in assessing a human being's true rights as well as the incapability of reason to define justice (Robinson 1998). According to this school, the notion of justice must be shaped based on what the Lawgiver, i.e. God, identifies as just and unjust as found in the religious texts and this is not open to question. This rational approach is not reflected in *fiqh* (Islamic jurisprudence) because in defining *fiqh*, human reason is considered incompetent in comprehending all hidden harms and benefits of matters; therefore, human reason is a futile and unreliable source in discovering true human rights (Kadivar 2011b: 50).

This discourse found special importance in the mid-nineteenth century with Muslims' encounters with modernity, which often began through external threats such as European military expansion into Muslim lands. These encounters resulted in moral and spiritual decline, as well as a downturn in science and technology and military strength in Muslim societies. Sayyid Jamal al-Din Asadabadi (1838–1897) and Muhammad Abduh (1849–1905) are known as the 'fathers of reformism' in Islam. Asadabadi considered reform as the only way for Muslims to counter European domination. Abduh also recognized how changes were necessary to preserve 'society's moral fabric'; therefore changes "were not only permitted by Islam, but were, indeed, its necessary implications" (Hunter 2009: 15), in order to bridge the modern world and the traditional world of classical Islam. As such, the *fiqh* (Islamic jurisprudence) belongs to the traditional worldview which must be revised. *Fiqh* is not only based on revealed message, but

consists of a commingling of revelation and the customs and conventions of the society during the Prophet's time. Therefore, reformists recognize that an inconsistency between religion and modernity is derived from the customary aspect of Islam, rather than the sacred message of religion. Hence, as Kadivar[47] says, the main duty of religious experts and scholars is "to extract the sacred message again and to push aside the sediment of time-bound customs" (Kadivar 2011b: 65). For instance, Abduh emphasized the responsibility of *fiqh* for downgrading women's status from the high level it has in the Quran (Abu Zayd 2013: 154).

In their efforts to find the causes and solutions for their issues, the reformists emphasized the restoration of Islam's rationalist and scientific spirit and reinterpretation of the religious teachings to suit current conditions and needs of Muslim societies. In reference to their location on the spectrum, the reformist perspective recognizes reason as capable of understanding justice and a human being's true rights as independent of revelation. Therefore, reformist schools of thought diverge in terms of philosophical outlook, concepts of the authenticity of human reason, methodology of analyzing Islamic scripture and legal sources as well as their view of the allowable scope for interpretation (Hunter 2009: 3).

7.1 Individual Agency and Rationality in the Reformist View

Human reason

In contrast with *Sunni* Islam, where *Ash'ari* traditionalism gained more prominence over *Mu'tazili* rationalism, *Shi'a* Islam adapted *Mu'tazili* rationalism and thus maintained the important role of reason in *Shi'a* jurisprudence. Therefore,

[47] Mohsen Kadivar (born 1959) is a philosopher and theologian. After abandoning his studies in electrical engineering at Shiraz University in 1978 he graduated with the equivalent of a bachelor's degree in Theology and Islamic Studies from Qom University in 1989. He earned the certificate of *Ijtihad* – the highest degree in Islamic religious tradition – from the theological seminary of Qom in 1997 under the supervision of Grand Ayatollah Hossein Ali Montazeri Najaf Abadi. He finished his Ph.D. in Islamic Philosophy and Theology from Tarbiyat Modarres University in Tehran in 1999. During 1992–1998 he taught as a visiting instructor for graduate students on Islamic philosophy and theology at Imam Sadegh, Mofid, Shahid Beheshti, and Tarbiat Modarres Universities. He also acted as Chair of the Islamic Thought office at the Strategic Research Center in Tehran for seven years until 1998.
Because of his critical analyses on the theory of "absolute rule of the appointed jurisconsult" (*wilāyat-i intisābī-yi mutlaqah-yi faqīh*) by Ayatolloh Khomeini, he served a prison term of eighteen months until 2000. Since 2009 Mohsen Kadivar has been a visiting research professor of Islamic studies at the Department of Religion at Duke University (Durham, North Carolina, United States). He has published numerous works on: human rights and democracy in Islam, classical and modern *Shi'a* theology and legal theories, *Shi'a* political thought, classical Islamic philosophy, and modern Quran studies [Kadivar, Mohsen. Biography.Official Website of Mohsen Kadivar.Available at: http://en.kadivar.com/sample-page-2/ (29 June 2015)].

reformists following the *Mu'tazili* school do not believe that human reason is only for understanding the revelation and that it exists in the shadow of divine law, as fundamentalists do. Instead they consider human reason as God's gift, which should be applied to manage the political, economic, and social affairs of society. However, they do not believe in 'the self-sufficiency of reason' but rather still acknowledge the need of human reason for revelation. This fallibility of human reason, as Yousefi Eshkevari[48] explains, does not prevent human beings from relying on it (Yousefi Eshkevari 2010b: 20). In fact, from a reformist point of view, reason and revelation are never in conflict, but rather they complement each other (Kadivar cited in Hunter 2009: 65–66). However, the perspective closer to secularism considers a more critical role for human reason, as Soroush[49] points out:

[48] Hasan Yousefi Eshkevari (born 1950) is a cleric and researcher in Islamic theology and history. He is also a journalist, and a former member of parliament. He studied for 13 years in the theological seminary of Qom. After the revolution he was elected as representative in the first Iranian parliament, though only serving one term, deciding to focus on cultural and research activities after the end of his term. He was a lecturer on the history of Islam at the Allameh Tabatabaii University for four years, before being barred from teaching at the University when he spoke for Dr. Kazem Sami, an Iranian dissident, during his funeral.
Eshkevari wrote for different journals and magazines which were banned by the government. He founded the Ali Shariati Research Centre in cooperation with other researchers in 1997 and has since served as its director. He was also contributor to the Great Encyclopedia of Islam, and an editor of the Encyclopedia of the *Shi'a*.
In December 2000, he was condemned to death for 'apostasy' and 'war against Islam' by the Special Court for the Clergy because of his speeches at the Conference on 'Iran After the Elections' held in Berlin on April 7–9, 2000, sponsored by the Heinrich Böll Foundation. The sentence was later commuted to five years in prison.
In the course of the protests over the 2009 presidential elections in Iran, Eshkevari came to Germany and has continued his research on Islam and Quran there [Yousefi Eshkevari, Hasan. Biography.Official Website of Hasan Yousefi Eshkevari.Available at: http://yousefieshkevari.com/?page_id=2 (29 June 2015)].

[49] Abdolkarim Soroush (born 1945) earned his degree in Pharmacology from Tehran University. He later moved to London to pursue further studies in analytical chemistry, and after graduating in this subject from graduate school at London he studied the history and philosophy of science for five and a half years at Chelsea College.
Soroush returned to Iran after the Revolution and was appointed as the Director of the newly established Islamic Culture Group. He was also a member of the Cultural Revolution Council which was responsible for reopening the universities and restructuring the syllabi of universities, which were shut down after the revolution.
In 1983, Soroush abandoned his governmental post and dedicated himself to teaching and research. He gradually became more critical of the political role played by the Iranian clergy, published his controversial articles on religious pluralism, hermeneutics, tolerance, clericalism etc. in the monthly magazine *Kiyan*, which was clamped down on in 1998 by the Islamic Republic government. Soon after, he lost his job and his security in Iran. Since 2000, Soroush has been a Visiting Professor at Harvard, Princeton, Colombia, Chicago and Yale Universities, the Wissenschaftskolleg in Berlin, and the Berkley Center for Religion, Peace, and World Affairs. His areas of expertise include the writings and philosophy of Rumi, Islamic and Democracy, Quranic Studies and Philosophy of Islamic Law, Islamic Political Philosophy, Intellectual and Religious History of Modern Iran [Soroush, Abdolkarim. Biography.Official Website of Abdolkarim Soroush.Available at: http://www.drsoroush.com/Biography-E.htm (29 June 2015)].

> The role of rationality in the arena of religion has, thus far, been that of a timid and discreet servant of understanding and defense of religion. However, defense and affirmation cannot be complete without a critique and analysis. The enterprise of rationality is an all-or-nothing project. One may not employ reason to attest to the truth of one's opinion, without leaving the doors open to its fault-finding critique. The attempt to enjoy the sweet affirmation of reason without tasting its bitter approach is pure self-delusion (Soroush 2002: 154).

In the reformist perspective, the Islamic legal system is divided into non-worldly and worldly aspects (Naraghi 2005). The sacred aspect of the Islamic legal system refers to the non-worldly and eternal factor, which is congruent with the worldly aspect rather than parallel to it. This aspect refers to essential precepts concerning matters of faith, ethics and devotion such as praying, fasting, belief in the afterworld and prophecy, which are immutable and fixed. In the reformist view, these are beyond the perception of human reason and reasoning in the realm of rationality. The second group of precepts – non-essential – deals with the worldly aspects presented in human interactions and sociopolitical affairs which are time- and space-bounded. This realm is allocated for the appraisal of reason; thus, the collective reason of humanity is the yardstick of such precepts in Islam (Yousefi Eshkevari 2013). As Naraghi (2005) explains, Muslims should follow collective reasoning to identify the social and worldly benefits of sociopolitical affairs in their worldly lives. Only if these worldly benefits of society are met, their non-worldly and eternal benefits will be satisfied. In other words, reasonable and worldly benefits in sociopolitical life precede eternal and non-worldly benefits. One must first recognize and identify the reasonable and worldly benefits of a legal and social system, and only then identify its eternal aspects (Naraghi 2005: 2). Accordingly, religion in this perspective should be reasonably demand-responsive for the exigencies of the time.

All reformists believe in the authority of human reason and profess that every reasonable action in modern times are verifiable by religion. This is justification for accepting the new concepts and events brought about by modernity under the condition that there is no evident rejection of those new concepts found in clear and strong wording, or are explicitly against ethical rules in the Quran – i.e. essential law. Depending on the extent of deviation, essential law can precede human reason in some reformist views, depending on their location on the spectrum. To decide which verses contain essential laws and which verses refer to rules that were only relevant in certain situations, they emphasize the importance of analyzing the historical context of revelation and religious sources (Abu Zayd, cited in Amirpour 2013: 69). Therefore, they accept the authority of human reason conditionally but the range of acceptance is related to their position on the spectrum.

Reformists, like the other two groups, recognize the main aim of religion to be the fulfillment of justice. They believe that in the Quran and the Tradition, Muslims are ordered to seek and serve justice. Yet determining the meaning of

justice and the sociopolitical system providing the circumstances to fulfill justice has been left to humans and human reason. Thus, fulfilling justice in the present society is the duty of humans and human reason of the present time. They allocate an essential role to justice in the interpretation of Islamic rules, and their application to contemporary conditions (Hunter 2009: 66). Therefore, human reasoning is of crucial importance because of its role in defining justice as the main aim of religion.

The role of human reason in the relationship of the human being with God and society

Reformists distinguish two realms of cognition. One is cognition of God and some metaphysical concepts like the afterworld, which they believe is beyond human reason. Though human reason is necessary to conceive this realm, in fact, the decision to accept religion is a choice undertaken by human reason; without the guidance of revelation, and reason has no access to this realm. The second realm consists of all worldly affairs, which deals with human interactions and social transaction and is the scope of authority of reason. However, there is not any consensus among reformists as to what extent reason in this area has authority or is independent from revelation.

The absolute role for human reason in relationships between human beings and God and nature is not definable (Interview D March 2011). Instead, human reason should be accompanied by revelation, for reason alone is not sufficient to comprehend all of God's characteristics and features as mentioned in the Quran. Human reason is limited and it must be guided by revelation to be able to understand such features. In debating reason, three distinct concepts should be noticed. The first concept is rationality, which is being able to differentiate right from wrong. The second idea is irrationality, which is contrary to reason. The third is non-rationality, which is not contrary to reason but is beyond it. Through rationalizing religion, some essential parts of religion which are beyond reason will be lost. Therefore, in the relationship between God and human beings, human reason plays a minimal role, even though in relationships between human beings it has a prominent role, as it does in the conduct of all human affairs, though still accompanied by revelation (Interview D March 2011).

The idea that science can guide human affairs and religion only has a secondary role is rejected (Interview D March 2011). As an example, the first interviewed representative of reformism refers to sexual relationships among human beings, saying that as a believer, he cannot accept homosexuality, even if his reason would not be able to reject it rationally, because revelation has a clear perspective on this subject and defines it as a 'perverted' relationship (Interview D March 2011).

In this regard, the second representative (Interview E February 2011) points out that in the history of human beings, reason has always played an important role, albeit the domain of authority of human reason is changeable. He believes in self-justifying critical reason as a proper means for managing today's human

issues. He considers no other sources which could limit autonomous reason – autonomous reason can recognize its own limitations. He refers to reason as a precedent criterion for believing in a religion. In his opinion the prophets were sent in one respect to arouse and apply human reason. While he emphasizes the important role of reason, he also stresses that sometimes it alone is not able to perceive all truths in the world. For example, in the relationship between God and human beings, though reason is of crucial importance, he believes that knowing God requires faith in the first stage. It means that believing in God's existence needs faith more than rational arguments. Even in relations between human beings, human reason cannot explain everything, such as love or hate.

In this regard, the third reformist representative who stands closer to secularism (Interview F May 2011) explains that rationality has a determining role in the relationship between human beings and God. Sometimes human beings arbitrarily make reason follow revelation. This means following revelation is also a choice undertaken by human reason. Sometimes, reason decides not to follow revelation, since it recognizes that it alone is adequate to regulate the relationship between human beings and God, and there is no need for the prophets and revelation. Similar to this is the relationship between human beings and society. He distinguishes various rationalities such as scientific, religious, artistic and philosophical rationalism, but considers a stable and essential concept of rationality leads to a dictatorship of rationality. He also explains that rationality is an outcome of collective reasoning instead of individual. He also speaks of a 'collective' rationalism rather than an individual rationalism. It is also rationality's task to figure out its limitations, and to determine if there is another source for cognition outside rationality (Interview F May 2011).

Equality of man and woman in religious doctrine

Similar to fundamentalists, reformists believe that men and women are created equal in humanity and human dignity, though reformists also recognize the different physical and psychological features between men and women, which in no way privilege either one of them and do not influence human dignity. "In the Islamic view the criterion for closeness to God is virtue and God-consciousness regardless of gender" (Interview D March 2011). The values mentioned in the Quran for *closeness to God* are not distinguished between genders. Also, human dignity in this view is based on the essence of humanity, which is not dependent on gender. Women and men are, of course, different in physiological, psychological and biological aspects, although these differences are complementary to each other and they do not influence human dignity. Therefore, in the Islamic perspective, men and women are equal in creation and neither one is superior over another because of gender (Interview D March 2011).

Similarly, representative E (Interview February 2011) explains that based on the Quran, all creatures are created in pairs, including human beings. They are also created differently, though the differences help them to know each other

better. He (Interview E February 2011) emphasizes the fact that the idea that all human beings are equal in their humanity can be derived from a verse in the Quran that mentions how we were created from a single soul. Man and woman are different in their physiology which leads to behavioral differences, though this is not a reason for defining different rights for them.

The third representative of this group (Interview F May 2011) citing Jean-Jacques Rousseau – "Man is born free and everywhere he is in chains" – considers this world as the world of inequalities, and points out that even men are different from each other; some are strong and some are weak. However, in the Quran it is said that God venerates human beings regardless of gender; hence there is no difference in the humanity of men and women. He also explains that some contemporary philosophers, including nominalists, maintain that there is no 'nature', and humans only have history rather than essence and nature. This means human beings have undertaken a historically progressive evolution. It is not possible to claim that there is a 'perpetual fact' in human beings throughout history. We cannot claim a constant nature for human beings, one which has remained fixed and unchanged throughout history. The word 'nature' implies the concept of 'constant' and this is a suspicious concept. Even genetic studies and neuroscience recognize the fluidity of human existence, rather than claim that human nature is stable. Though it could be said that human beings are similar to each other, it is an indefensible argument to attribute similarities among human beings to a constant nature. He (Interview F May 2011) emphasizes the fluidity of man's and woman's existence, which rejects the dichotomy system between genders and recognizes the general difference between all human beings rather than between only men and women. Therefore, he believes that women and men are similar to each other. By defining a constant fact in men's and women's 'nature' they could erroneously be divided into two and remain distinct from each other forever.

Changeability of rights

Contrary to fundamentalists, reformists recognize the role of human reason in defining rights. Reformists acknowledge that throughout history, some rights have been eliminated – such as rights related to slavery – and some rights have emerged, such as women's rights and homosexuals' rights, regardless of whether such new concepts of rights are acceptable and legitimate in religious viewpoints. Furthermore, reformists generally take notice of the role and impact of religion in defining rights over the course of time, whether in positive or negative aspects.

The first representative of reformism (Interview D March 2011) does not recognize the absolute constant character of rights but neither does he suggest that all rights are completely changeable. He provides slavery as an example – a practice that was completely acceptable in the past but one that is in no way tolerat-

ed today; similarly, gender equality which was not recognized eighty years ago is now considered an international norm. There are also rights, such as property rights or the right to life which have both been recognized throughout history but their meanings have evolved through time.

Ontologically, he (Interview D March 2011) claims that there are certain rights recognized by believers as God-given rights, which are, for seculars, natural rights. It should be noted that for believers, God is always present in history and human development; hence the distinction between God and reason is false, because reason works by God's will. Epistemologically, reason plays an essential role for defining rights.

In the second representative's point of view (Interview E February 2011), human rights are non-constant and contractual, are formed by human reason and are based on time and space circumstances. He says that human beings have the ability to manage their affairs; though throughout history, religion has been one factor for determining rights. He argues that the prophets aimed to offer a solution for their society's problems and to manage the social, economic and political affairs of their society. Therefore he distinguishes prophecy from governance. The government requires acceptance of some conventional traditions in the community, though such traditions in the prophet's society were later considered by jurists as sources for *fiqh* and religious precepts. He emphasizes that in pre-modern societies, religion was necessarily the main source for determining rights and laws. In the modern era however, society needs no more prophets; instead, human reason provides a basis for determining rights and laws. This does not lead to the end of religiosity but only the end of prophecy. Therefore, he does not recognize any privilege for religion to determine human rights. The source for rights and laws are collective reasoning and human knowledge and experiences.

For the third representative (Interview F May 2011), it is also obvious that rights are changeable rather than constant. He explains that we are now in the paradigm of rights, in contrast to the paradigm of duty-obligation. Today human beings are defined by their rights, as opposed to being duty-bearers whose duties are defined by an authority such as God or the king. In the paradigm of rights, we encounter new concepts in the course of time, which were not considered as rights in the past. For instance, speaking of the rights of homosexuals in the last decades was inconceivable, but today these rights are slowly becoming acknowledged and indisputable.

He (Interview F May 2011) mentions that all rights we recognize today as human rights can be derived from non-religious sources; in some cases they are even contrary to manifestations of religion. However, some arguments point to the religious basis of human rights principles. Even, those people who do not believe in religion, pay attention to religious discrimination in order to avoid such discrimination in defining human rights. Therefore religion is of crucial importance in both the negative and positive sense in determining human rights.

Gender difference and women's rights

Although all reformists agree on rights for everyone regardless of gender, they have differing perspectives when it comes to defining equal rights for women. Some reformists advocate certain affirmative actions for women because of their different physiological features, such as special rights for pregnant or lactating women. They consider law of maintenance, as well as prohibition of work such as mining for women, as affirmative action in developing countries.

The first representative (Interview D March 2011) affirms equal rights for all human beings regardless of their gender. However, he recognizes the existence of special rights that provide support to women because of their biological and physiological differences from men. For instance, he refers to laws addressing violence against women including marital rape, the special needs of pregnant and lactating women and affirmative action for women in labor and employment. For example, he said that some forms of labor are harmful to women's health, such as mining, and should not be permissible. Another example is military service. He believes that women should not be allowed to serve as combatants; rather they should be encouraged to take on administrative/office jobs or medical care in the military. Another form of affirmative action is the law of alimony in Islam, which is supposed to be paid by the man in the family in developing countries. He explains that in such countries the work force is usually male and there are not many job opportunities for women, therefore prohibition of this law would be detrimental to women.

The second representative (Interview E February 2011) explains that while there are biological and natural differences between men and women, these cannot justify unequal rights or laws for them. He refers to Aristotelian essentialism and the concept of desert-based justice which in the past recognized unequal rights for men and women because of the essential difference between them. Today, such views are not acceptable because of modern thought based on egalitarian justice, which is also incorporated in the Universal Declaration of Human Rights.

In this regard, the third representative (Interview F May 2011) points out that even if we accept the statement that there is inequality in nature between man and woman, it does not mean that they should experience unequal rights too. This is the same logic that governs over racism and slavery. For example, Aryans believe in the fundamental difference between their race and non-Aryans such that this differentiation logically determines their rights and privileges. He believes that such an argument suffers from a logical mistake – that even knowledge cannot be a source of value (evaluation). It means that when we discover a fact that two things are different, it does not automatically mean that we must consider different values for them. In other words, from 'it is' one cannot derive 'it must'.

Reformists categorize all religious precepts into two groups: essential and non-essential (under different names). They acknowledge the second group, non-essential precepts, as the means to achieve the objectives of Islam. Accordingly they are valid and legitimate as long as they help reach this objective. Thus, they are immutable and temporary. These non-essential precepts are to be found in the realm of human interaction and social affairs and do not comprise the worship precepts. Reformists' efforts also aim to present a religion based more on moral aspects rather the *fiqh* commandments. In other words, they try to relieve religion from the shadow of *fiqh* and to propel it in the direction of morality and ethics.

For the first representative (Interview D March 2011), religion is more than a mere experience, and he claims that a different understanding of religion is elitist. He says that definitions of religion must encompass the majority. He likewise proposes a definition that describes religion as a set of fixed and permanent set of rules or instructions. He divides religiosity into four layers. The first layer is 'faith and belief', which is of crucial importance in defining religion. This implies trust and belief in God and the afterlife. Belief requires performance of and commitment to rituals, which should be considered as the second layer. These include prayer, pilgrimage, fasting, etc. Without such rituals, a person can hardly be recognized as believer. The third layer is morality, which is necessary for religion. The fourth layer pertains to regulations and terms for religious practice which are mentioned in the *fiqh*, including precepts relating to civil law, penal law, public and private law and fundamental rights. He argues that more than ninety-eight percent of the verses in the Quran are related to the first three layers, while only about two percent concern the *fiqh*, although *fiqh* has overshadowed other layers of religiosity. Nonetheless, the omission of *fiqh* from religion means relinquishment of the practical part of religion, which could only result from imposing extreme rationality, ultimately leading to the dissolution of religion.

He (Interview D March 2011) presents three criteria for the validity of precepts: compatibility with reason, compatibility with justice, and compatibility with morality. He explains that all Islamic instructions from the age of revelation met these criteria. However, in the modern era some of them, especially laws related to women, do not meet such criteria and should therefore be modified. He explains that the criterion of being rational is accepted by all Islamic jurists, but there is no agreement on what rational is or not, although in his view, such dissensions are normal in human science too.

According to the first representative (Interview D March 2011), determining which of the Islamic laws are conditional or unchangeable requires special knowledge of the Quran and the Prophet's tradition as well as knowledge about the capabilities and limitations of human reason in the modern era. Such knowledge is more juristic than philosophical or theosophical. He explains that in religious knowledge, there are two kinds of precepts – essential and apparent. The

essential laws are based on an exact verse from the Quran. While sometimes the verses may have a very specific meaning, it is probable that they may refer to other meanings. In this sense, he says such laws are questionable. He claims that most of the precepts found in *fiqh* are questionable and as such, they may be changed or modified. It is possible that the Islamic jurists have different interpretations of essential precepts. However, jurists are not allowed to impose on others to take as essential what they believe and / or reject other interpretations of such precepts. Therefore, there exists a kind of internal religious pluralism, based on different interpretations which, in turn, could be challenged by other jurists.

In the second representative's point of view (Interview E February 2011), religion as a system of ontology and epistemology of human beings, deals with values and *do*s and *don't*s, as well as the social affairs of human beings with the aim of human salvation. He enumerates three different realms in religion. The first is worldview, which is constant and independent from time and space circumstances. In philosophical terms, ontological assertion could be false or true, but not amendable. For instance the assertion that God exists may be true or false, but whatever the answer is, it is not possible to change or alter it. The second category is ethical *do*s and *don't*s, which are based on worldview. He says these may be in the form of ideologies and says that they are also eternal and beyond time and space.

The interviewee (Interview E February 2011) divides the realm of religion into two parts: the worship precepts and the social precepts. He recognizes worship precepts as invariable, since belief in God requires some practical actuation; simply believing in the heart is not adequate. On the other hand, social precepts that regulate human relations in politics, economy and community are changeable based on time and special circumstances. He explains that even according to traditional *fiqh*, some provisions are changeable according to the 'relationship between the subject and precept,' such that if the subject changes, the precept must change as well. Though the important point is, unlike traditionalists and fundamentalists, social scientists, experts and parliamentary representatives have to figure out if the subject has changed. He said these are not dependent on the *foqaha* (jurists and experts in Islamic Law) who do not have enough information about the changes of the subject in modern times. He recognizes a criterion for evaluating the Islamic precepts in the modern era, which could be more rational, equitable and ethical than other precepts. Furthermore, he adds that the precepts are not relevant per se, but they are just means to reach a specific aim – human salvation. Merely being mentioned in the Quran does not mean the obligation to follow them in present day social life, but their effectiveness in the fulfillment of the religious aim – justice – must be noted.

Similarly, the third representative (Interview F May 2011) explains that religious precepts can be divided into essential and contingent precepts, noting that the contingents are neither sacred nor the main objectives of religion. He explains that a contingent precept could have been expressed in other forms in oth-

er times and spaces. The essentials are the aims of religion, which can be categorized into six subjects including protection of property, life, generation, rationality, identity and religion. All contingent precepts are means to achieve these aims. Therefore, they are just methods and valid only in so far as they can help achieve the aims, otherwise they should be substituted with other means. He distinguishes the precepts pertaining to worship from this categorization, because these precepts, such as the form of prayer, have their own logic that is not obvious for believers. However, he recognizes these as temporary laws and changeable unless it could be proved that they are permanent precepts.

The other point he (Interview F May 2011) emphasizes is the superiority of religious morality over religious jurisprudence (*fiqh*), giving more importance to a set of moral principles instead of some strict juristic precepts. He underscores that a religion without ethics and morality loses its meaning as a religion.

The different ways by which reformists, both past and present, accommodate change are presented in by Yousefi Eshkevari in his article *Rethinking Men's Authority over Women* (2013: 199–201). In the following, the most important solutions will be introduced, which have been debated since the 1979 revolution in Iran.

The changeable and unchangeable

Soroush (2011) explains that while traditional *fiqh* is not changeable, it does contain some concepts which imply changeability in Islamic regulations, even in the traditional sense. For example, dividing the regulation into two – the essential and the non-essential, is a principle accepted by all jurists. The controversial point, in both the *Shi'a* and *Sunni* branches of Islam, has been the application of the principle, i.e. determining what the essentials are and what the non-essentials are. Soroush gives a historical example 'the Friday prayers' (*jum'a*) which are recommended in the Quran[50] and were always upheld by the Prophet, have been abandoned by Shi'ites for twelve centuries. Some Shi'i jurists (*foqaha*) considered this prescription as an essential, but acknowledged that it needs some certain conditions for upholding it; yet according to them, these condition have been absent for the last twelve centuries, after the Twelfth Imam. Hence, the Friday Prayers could be relinquished. As a result, determining what exactly an essential is at the discretion of the jurist (*faqih*), and not the written word (Soroush 2011: 9–16).

Similar to the precept of Friday prayers, as Soroush explains, some brutal physical punishments, such as cutting the hand of the thief or stoning, that are mentioned in the Quran or in the *sunna* or in both, cannot be applied today according to some Islamic jurists (*foqaha*) because their application depends on the having an Islamic state in the sense that the Prophet or an Imam is the head

[50] "…when the call is proclaimed to prayer on Friday, hasten earnestly to the Remembrance of Allah, and leave off business…" (Quran 62: 9)

of the state, which is not observed today. Soroush emphasizes that this is not a reformist idea, but the division of rules into essential and non-essential is a general principle held by the traditionalist jurists, who have their own arguments in differentiating essential and non-essential regulations. However, there is no common agreement on what is to be counted as essential among them (ibid.: 11–12).

Another consideration in *fiqh*, which implies the changeability or non-changeability of Islamic rules, is the idea of the ambiguous and the non-ambiguous. The verses of the Quran are classified into *muhkamat* (non-ambiguous) and *mutashabaht* (ambiguous). Even the Quran itself mentions these two categories: *He it is Who has sent down to thee the Book: In it are verses basic or fundamental [of established meaning]; they are the foundation of the Book: others are allegorical* (3:7). Similar to essential and non-essential, there is consensus that ambiguity and non-ambiguity exist, but determining verses as ambiguous and non-ambiguous is again at the discretion of the commentators of the Quran.

A third consideration is the metaphorical and literal expressions in the Quran. Since the Quran is quite poetic, as Soroush (2011) points out, some verses can be interpreted metaphorically or literally. There is not a fixed group of verses that are to be interpreted either metaphorically or literally. This depends also on the commentators of the Quran.

Soroush argues that from an ontological perspective, there is nothing ambiguous or non-ambiguous per se, essential or non-essential, metaphorical or literal, but rather the distinction is epistemological or hermeneutical. This means "the distinction is something that emerges in the process and in the context of interpretation" (Soroush 2011: 11–14) rather than something already given and revealed to the Prophet. Therefore, there are various ways of determining what is changeable and unchangeable for different people in different times throughout the whole history of *fiqh*. Consequently, what is available for us is the interpretation, not the text itself. Based on this argument, Soroush concludes that "Islam is nothing but a series of interpretations of Islam" (ibid.).

The criteria for determining the changeable and unchangeable

In the reformist perspective, there are some criteria for distinguishing the changeable from the unchangeable. Kadivar (2011b) highlights three characteristics of the Islamic precepts that are non-worship related in the age of revelation and believes these are necessary for Islamic rules in various times and spaces.

Every Islamic rule should be firstly, rational by the conventions of the time; secondly, just by the conventions of time; thirdly, must serve as the best solution for the interests of humans, compared with the precepts set by other religions and legal systems of the time. Therefore, Islamic rules cannot be unjust, violent, degrading and irrational, but rather they were formulated by the wise Lawgiver in accordance with the best interests of the worshippers. Accordingly, Islamic regulations in the Prophet's time were based on collective reason, including conventions of justice and fairness at that time. They were also superi-

or to the existing laws and traditions of that community. Their validity remains as long as they maintain these criteria. Accordingly, some precepts are permanently valid, for these are related to the quality which does not vary in different times and spaces, and some precepts, which mostly consist of commands and precepts mentioned in the Quran and *Sunna* – especially those related to social transactions – are conditional and temporary; thus, they are practical "only as long as the circumstances that make them in keeping with people's best interests persist" (Kadivar 2011b: 66–68).

In Kadivar's opinion, the conflict between Islamic precepts and ideas that have resulted from the modern epoch such as human rights, women's rights, religious minorities' rights, and the indecency of violent physical punishment, do not originate from the permanent precepts, but are temporary rules which should change in order to meet the requirements of rationality, justice, and compatibility with existing conditions in the contemporary age. Though such precepts were mentioned in the Quran and revealed by the Lawgiver, "they did not rank among the Lawgiver's permanent, unchanging laws" (ibid.: 72). For Kadivar, it is a denial of God's eloquent wisdom to say that God did not consider the implications of time and place when he revealed his word to the Prophet. That would mean abandoning people to their own devices. At that time, "there was great need for such precepts, in view of the limitations of collective rationality in the age of revelation. Despite his perfections, the Prophet would have been unable – without the direct assistance of God – to solve the countless problems related to organizing religion and running society" (ibid.). Consequently, the best way was to formulate temporary precepts related to the best interest of the society during the time of revelation, along with the permanent precepts of Scripture and tradition, as Kadivar argues.

Similar to Kadivar, Eshkevari recognizes reason and justice as the most important factors for applying non-worship related Islamic rules. He argues, if Islam is a rational religion, no rules in Islamic law and Islamic jurisprudence will be against rationality and vice versa. There are no justifications to consider the Islamic rules, which were enacted in a specific place and time for a particular society, as perpetual and unchangeable (Yousefi Eshkevari 2010b: 13). For Eshkavari, justice is an important criterion for assessing Islamic rules. He believes that although the concept of justice is very common and has a general meaning understandable by all at all times and places, the recognition of the instances of justice is entirely a rational subject and is to be undertaken by people. Eshkavari believes that justice as a main principle in Islam is unchangeable within Islam, while all rules bounded to social situation, time and place are subject to change. If every rule can be just and in the interest of human beings within a community at a specific time and can be unjust for others in a different time and place, it must therefore be changed (ibid.: 18–19).

Both Eshkevari and Kadivar identify *ijtihad* (the practice or the quality of extracting the Islamic rules and instructions from religious sources) as a means to distinguish precepts that are changeable in accordance with the demands of time

and place from the unchangeable and permanent precepts of the Islamic laws. In other words, *ijtihad* is the knowledge of extracting Islamic instructions from the main religious resources – the Quran and *sunna* (Prophet's tradition). *Ijtihad* is the personal interpretation of *Mojtahed*, a highly qualified Islamic jurist with a high level of religious knowledge, making him competent in interpreting the Islamic laws. He is allowed to issue *fitva* (a formal legal opinion to an Islamic law) by '*ijtihad'*. This is a *Mojtahed's* duty: to distinguish the changeable and unchangeable precepts based on the interest and 'expediency' (*maslahat*) of society at the time (Yousefi Eshkevari 2010; Kadivar 2011b: 73).

The distinction between Accidentals and Essentials (intrinsic and contingent) (zati va arazi)

According to Soroush, the greatest part of the Islamic precepts, which is understood as the entirety of Islam, is the accidental or contingent type and as such is not the main goal of the prophetic mission. The contingent aspects of religion are those that could have been different from what they are now, including language, social and cultural contexts, and legal aspects (in Hunter 2009: 79).

Soroush's theory explains that the sacred text has a natural and human side. What he considers as the accidental (*arazi*) part of the Quran is the reflection on the history and culture of Arabs. In his view, the sacred aspect and the main goal of the prophetic mission should not be defined based on its accidental aspects, but the sacred element. Therefore the main goal of the text is a message that, though presented in the sociocultural and historical contexts of a specific society, is beyond those sociocultural and historic components. The historical and cultural elements of Arab society at that time do not reveal the sacred essence of the text (in Naraghi 2005).

Soroush (2008) explains in an interview published in his website that revelation is developed within societies; thereby it "adapts itself to the environment and takes on the color of the environment in every way" (Soroush 2008). Therefore, religion takes on the historical background and events that took place in Arab society at the time, as well as the language spoken in the society and even the legal aspects. Consequently, religion did not express disagreement with many concepts of Arab society at the time. "The new rulings barely amount to one per cent; ninety-nine percent consists of the rulings that were then current among Arabs" (ibid.). Therefore one of the main tasks of Islamic scholars should be to separate essential components of the religion from its other aspects.

In Soroush's view, these are all contingent and accidental elements of religion and nothing becomes sacred just because of being historic or Arabic. As a result, some Islamic rules such as rulings on slaves or stoning existed in pre-Islamic Arab society and continued to be the social regulation after Islam emerged. Soroush believes that understanding Islam in such a way that its ideal society is ancient Arab society is contradictory with the timeless and universal essence of Islam. It is not possible to consider modern society as an expansion of ancient society (Soroush 1388/2009a: 58–62).

This distinction is discussed by other reformists as well. Eshkevari also separates Islam as faith (*iman*) from Islam as culture (*farhang*), and considers Islam as faith as beyond time and space and Islam as culture as bound by time and space. He claims that the latter disguises the essential message of Islam towards justice and liberation by its 'formalistic rituals and preexisting customs.' (in Hunter 2009).Under the prevailing cultural historical dimension of Islam, it would be difficult to speak of gender equality or a democratic political system. In order to achieve an Islamic society compatible with modern concepts, a reformist interpretation of Islam, or in his words, 'religious intellectualism' (*roshanfekri-e dini*) (ibid.) is required, focusing on Islam's essential values, such as "justice and respect for human dignity, and utilizing a rationalist method of interpretation of sources" (ibid.: 75).

Traditional Islam vs. Islam as an End in Itself (Historical Islam vs. Spiritual Islam)

This line of reasoning is discussed in greater detail by Kadivar.[51] He distinguishes traditional and historical Islam from spiritual Islam, or what he calls 'Islam as an end in itself'. In his explanation of traditional Islam, the cultural, temporal and spatial circumstances of the Prophet's epoch are recognized as Islam, and hence are sacred, inalterable and ideal forms of Islamic thought. In this perspective, the form and appearance of Islam at the time of revelation is considered as the ideal and genuine form of Islam. Therefore most of the efforts for revival are towards the reconstruction of the conditions and exigencies of those early days. On the other hand, Islam as an end in itself,

> by passing over the temporal and spatial conditions of the age in which the religion arose, considers religiosity through the cognition and realization of the spirit of religion and the goals of Islam. Based on this view, theoretical and practical alignment with the aim and the purpose of the Revelation and the spirit of Islam, i.e., piety, is the criterion for being religious, and not the mere observance of the particular temporal and spatial superficialities and forms of the Age of Revelation (Kadivar 2011a: 460).

In this perspective, religious scholars try to identify and abandon those commandments which deal with temporal issues that no longer have relevance in achieving the major goals and timeless criteria of faith.

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[51] Kadivar deals with this subject in his 2002 article: *Az Islām-i Ta'rīkhī bih Islām-i Ma'nawī' (From Historical Islam to Spiritual Islam),* which was translated in English under title *From Traditional Islam to Islam as an End in Itself* in 2011 with his updated views. This research introduces his concepts based on this English translation of the article with his last revisions. Kadivar, Mohsen 2011a. From Traditional Islam to Islam as an End in Itself. *Die Welt des Islams,* International Journal for the Study of Modern Islam, 51, Brill, Liden, The Netherland, 459–484, available at: http://en.kadivar.com/2011/12/11/from-traditional-islam-to-islam-as-an-end-in-itself-2/ (26 June 2015).

In this approach, as Kadivar elaborates, Islam is a faith which is eternal and beyond time and space and is based on "virtues, norms, and wise, just, and rational commandments" (ibid.: 478). In this sense, religion consists of "faith and belief, ethical and moral virtues, the commandments of the *fiqh* of ritual worship (*fiqh-i'ibādī*) and some of the principles in the jurisprudence of human interactions (*fiqh al-mu'āmalāt*)" (ibid.). The main part of the jurisprudence of human interactions should be considered as an answer to the exigencies of time and place, such as all commandments regarding criminal law and the penal code, and civil law (including family rules and non-criminal personal law)'. For this reason, Islam 'signed off' on some pre-Islamic regulations as they existed, or only reformed a few aspects which are called verdicts of approval (*ahkām-i imā'ī*), versus verdicts of innovation (*ta'sīsī*)", for they were in accordance with the justice and human communities' worldly interests in that time (ibid.: 479).

The criteria for the legitimacy and persistence of *fiqh* regarding human interaction (*mu'āmalāt*) is, according to Kadivar, not violating justice and not violating the way of reasonable people (*sīra-yi 'uqalā'*). Kadivar explains that justice returns to the criterion of reason, and is provided by reasonable people, but its importance has resulted in its emphasis and even preeminence over the other criteria in this debate.

Based on these arguments, Kadivar resolves that in this view of Islam, practical commandments and forms are not superior to religion's goals, but rather they are only means to provide a way to achieve 'Faith's lofty goals.' Hence they are legitimate as long as they are in the service of attaining these goals (ibid.: 480). Any commandment which is opposite to the criteria of justice and the way of reasonable people in this time "will be ipso facto outside the circle of religiosity and it will be discovered that it is among the temporary and non-permanent commandments of religion" (ibid.: 483). The remarkable point here is that such commandments are not replaced with another religious commandment, but they are substituted with 'reasonable laws' which are posited by public wisdom, because "legislation is restricted to God and the Prophet alone and, in fact, we have absolutely no record in preserved tablet (*lawh-i vaqi'*) to indicate the existence of any other commandments in the sharī'a to be elucidated" (ibid.: 481; 483). Consequently, it is not only the jurists who are responsible for assessing the agreement of religious commandments with the criteria of justice and the way of reasonable people, but also the mainstream scholars of religion and Islamologists who have a "profound comprehension of religion and religious texts" as well as "a practical knowledge of the exigencies of the times, the way of reasonable people and the criteria of justice" (ibid.: 482).

As a result, in this perspective, the scope of *fiqh* (Islamic jurisprudence) is gradually diminishing and "it was gradually becoming more evident that some of the commandments of the *sharī'a* were not permanent and are therefore categorized as variable commandments which are disfavored at the present time, by grace of religion's vast dimensions, the pious found the opportunity to deepen faith and promote a vaster wisdom" (ibid.: 481).

Religion vs. Religious Knowledge (Theory of the Contraction and Expansion of Religious Knowledge)

The theory of the Contraction and Expansion of Religious Knowledge, developed by Soroush between 1988 and 1990, distinguishes religion from the understanding of religion in an epistemological view and characterizes religion as flawless, sacred and heavenly, constant, complete, eternal, immutable, and free from cultural specificities and unblemished by the artifacts of human minds; while the understanding of religion, as a human endeavor like any other type of human knowledge, is not sacred but earthly and human, flawed and in flux, relative, and time-bound (Soroush 1388/2009b: 486–488; Soroush 2002: 31). Reason does not assist or supplement religion, but "it struggles to improve its own understanding of religion" (Soroush 2002: 31). Hence it is not possible to speak of the agreement or disagreement of reason and revelation, for they belong to different realms. Religion is God-sent and as such it is pure and absolute, though understanding and realizing it is a human endeavor and in this process of being understood by human beings, it loses its purity and absoluteness (Kamali 1995). This implies religious knowledge which makes religion – though created by God – entirely human and subject to all the dictates of human knowledge, in the same way that nature is create by God, while physics or mathematics are created by humans. As a branch of human knowledge religious knowledge is incomplete, impure, insufficient, and culture-bound, and therefore "it is religious knowledge, not the scripture itself that takes the pigments and aroma of cultures, undergoes change, and needs purification" (Soroush 2002: 33). As a result, what must be altered in order to reconcile Islam with the circumstances of the modern world, is not religion, but religious knowledge, for it is religious knowledge and the human understanding of religion that may be either in accordance or inconsistent with other parts of human knowledge. Therefore, what the revivalists do is replace one understanding of religion with another, while accepting the eternal nature of the Quran and the Tradition (Soroush 2002: 31–33; Jahanbakhsh 2001: 147–148).

Soroush emphasizes that the goal of this theory is not "to modernize religion, reinterpret or complement shari'a, relativize or deny the truth. Rather, the theory aims to make explicit the process through which religion is understood and the manner in which this understanding undergoes change" (Soroush 2002: 34). Understanding of religion is evolving and is in constant exchange with other branches of human knowledge. Since human knowledge will never reach its summit, religious knowledge will also be perennially subject to change. In other words, it is subject to 'contraction and expansion,' (Hunter 2009: 79) though religion will remain immutable.

The remarkable point here is that religious knowledge should be under the light of modern concepts and consistent with the modern understanding of the world (Soroush 1386/2007: 349). Accordingly, religious knowledge should have three important axes in Soroush's view. First, coordination and agreement with the sciences of the era; second, being influenced by and receiving support from modern science; third, being able to respond theoretically and practically to the

questions of its time (Soroush 1388/2009b: 247). These characteristics demonstrate religious knowledge as a secondary knowledge which is directly under the influence of other branches of science and employs the findings of other fields of science in their analyses and studies. Hence, speaking of independent religious knowledge is not possible, because it is directly or indirectly dependent on a human understanding of the external world (ibid.: 156–160). Even natural sciences and religious knowledge are inter-dependent. It is not possible to have a completely different and independent understanding of humans, the universe oand nature in the natural sciences and in religious studies. Since human understanding of the world has fundamentally changed, it is absolutely necessary to change theological understanding. Soroush's criticism of fundamentalists is that their understanding of religion is based on their traditional understanding of humans and society. However, this traditional understanding of the world has long been replaced by modern views (ibid.: 189).

Soroush goes beyond this and states that human knowledge is what provides the reasoning for acceptance of religion; therefore it has priority over religious knowledge. It is human knowledge that logically and practically identifies the geography of religious knowledge and its limits. If there is not any understanding of the world, then there is no need to imagine the need for a prophet in it, and also if there is not any understanding of justice and injustice, then there is no way for us to tell whether a religion is just or unjust. Hence, philosophy, psychology, sociology and human studies are all prior to religious knowledge. No religious knowledge can be developed without a previous world view and it will not remain constant if that prior view of the world shifts. Soroush concludes that even acceptance of religion, similar to understanding of religion, depends on non-religious foundations. Things like being just or being rooted in human soul or being able to guide humans to felicity, are the bases of accepting a religion by most believers. All of these bases have to be defined independently from religion (ibid.: 191; 248).

Approach to the Quran

In order to critique the Quran as a historical rather than a sacred text, one must trace the idea back to the *Mu'tazili*, when the Quran was not understood as the direct word of God. This controversial idea has been followed by some thinkers up to the present day, though it has been rejected by many reformists.

Between 1997 and 1999, Soroush developed his theory of *The Expansion of the Prophetic Experience* which he considers as the companion volume of *The Contraction and Expansion of Religious Knowledge*. In his first work, he deals with the evolution of religion, explaining that religious knowledge is distinct from religion itself, as well as providing a discussion on the interpretation of text. In the theory of the expansion of the prophetic experience he explains the historicity of the Prophet's revelatory experience, and claims that the Quran is

not the unmediated word of God. This idea was also mentioned by Mohammad Mojtahed Shabestari in a series of articles titled *Qerā'at-e Nabavī az Jahān [Prophetic Reading of the World]*, where he talks about the Quran as a singular reading of the world by the Prophet – that is, a *reading* essentially established on, and rooted in the divine revelation (*wahy*), but not equivalent to it (Mojtahed Shabestari, quoted in Madaninejad 2011: 61).

In the theory outlined in *The Expansion of Prophetic Experience*, Soroush investigates "the actual process of revelation and the way in which the text, which we endeavor to interpret, emerged and materialized, because the way in which a text comes into being affects the meanings that we obtain from it" (Soroush 2008). He argues that is because of the influence of our presuppositions in understanding a text. Hence, this theory deals with one of the most important presuppositions in the interpretation of a text, i.e. the theory about the genesis of the text. Accordingly, Soroush explains "the relationship between the Prophet and the text that he produced; the text that we heard from him and now have as a keepsake" (Soroush 2008). This debate ultimately raises the question of: "what religious-devotional duty does this construal of the Koran – as a Prophet-produced text – lay before us?" (ibid.).

In an interview on his theory in 2007 published in his website, Soroush considers revelation as 'inspiration'. In a traditional perspective, revelation is differentiated from inspiration; it is rather a message to convey to the people, passed to the Prophet from God by Gabriel. In this approach, the Prophet is considered as just a passive instrument and is irrelevant both in the content and the rendition of revelation. By contrast, Soroush emphasizes a pivotal role for the Prophet in the production of the Quran. He analogizes revelation to poetry as a means of knowledge in understanding the process of revelation: "the poet feels that he is informed by a source external to him; that he receives something" (Soroush 2007). The Prophet also had a similar feeling: "that he is captured by an external force. But in fact – or better: at the same time – the Prophet himself is everything: the creator and the producer" (ibid.). That is, the Prophet may arrive at a discovery, under God's supervision and guidance. That is, in Soroush's view, the Prophet has 'God's endorsement' (Soroush 2008).

To convey the discovery – the content of revelation – the Prophet applies his own language, images and knowledge; therefore, his personal history and personality have crucial importance in shaping the text. Accordingly, the content of the revelation is from God, while its rendition was influenced by the Prophet. In this way, the Prophet is also the creator of the revelation, as Soroush describes, and revelation has a human aspect. "A human view of the Koran makes it possible to distinguish between the essential and the accidental aspects of religion. Some parts of religion are historically and culturally determined and no longer relevant today" (Soroush 2007). This is in contrast to the traditional perspective, which recognizes the revelation as infallible. Today revelation is considered infallible by many Islamic scholars, but "only in purely religious matters such as the attributes of God, life after death and the rules for worship" (ibid.). Some

parts of the scientific, historical and social matters that are mentioned in the Quran are regarded as inaccurate and may even be wrong. These kinds of errors in the Quran are usually justified by the argument that "the Prophet 'descended' to the level of knowledge of the people of his time and spoke to them in the language of the time" (ibid.). Or, according to the traditionalist perspective, contemporary human understanding is insufficient to comprehend the truth in the words of the Quran. But from Soroush's point of view, on the one hand the Prophet spoke in his own language and knowledge and only said what he believed. It does not seem that his knowledge about the universe and humanity was greater than other people in his era. On the other hand, such errors in the Quran are not beyond human understanding; rather they are mistakes which were made by the Prophet according to his understanding of the time. However this does not violate his prophethood and does not deny the godliness of revelation, for he was a prophet and not a scientist or a historian (Soroush 2007). Soroush explains that the Prophet had a monotheistic experience which he expressed in a time- and space-circumscribed language proper to people's perception of his time. In his opinion, attributing the identity of the narrator to God is allegorical, since narrating is a human concept, and this was done to make revelation apprehensible for human perception. Soroush considers the Prophet in the process of revelation as someone who is prepared by God to be active and creative rather than a passive individual who just receives God's message. In fact, the Prophet is the speaker because God wants it so. Therefore, the Prophet speaks and what he says is attributed to God figuratively, and hence the Quran is the Prophet's words as well as God's words. So, God speaks through the Prophet's language. Soroush explains that the language of every nation is related to their requirements; hence, it is obvious that the Arabic language during the Prophet's time was not able to express some philosophical ideas. The Quran was written in this context, shaped in the framework of the Prophet's experience. Though, according to Islamic mystics, as Soroush says, no language framework sufficiently expresses all concepts of the Quran.[52] As a result, Muhammad's discovery of God's perfect message is framed by cultural features and limited knowledge in the Prophet's epoch and it was not beyond time and place, because the Prophet himself was not beyond time and place. In this way, Muslims should identify and translate the essential message of the Quran over time (Soroush 2007).

Accordingly, Soroush tries to elaborate a natural phenomenon even in the deepest layers of religion; i.e. the Prophet's experience of revelation, which is intensely impacted by the Prophet's personality. Hence, revelation in its progress and completion has a deep and strong natural and human face. At the same time, while accepting these human aspects of the revelation experience, he cautiously tries to avoid converting the revelation into a completely human and conventional one. From his point of view, accepting the conventional aspect of rev-

[52] Personal communication 2011.

elation is not in any way the same as denying its sacred essence (Arash Naraghi 2005).

Like Soroush, Kadivar believes that the Quran must be read historically. The sacredness of God's word is not in question, for the Quran introduced and defined itself as God's word. Nonetheless, he maintains that the Quran, on the one hand, is inviolable, containing necessary and timeless wisdom, and on the other, it includes verses that are no longer relevant and need to be abandoned when practicing contemporary exegesis (Madaninezhad 2011: 10; 54–55).

Soroush's opinion has been criticized by other reformist representatives, who argue that some thinkers do not recognize the Quran as God's immediate words; they rather see it as the Prophet's monotheistic experience. As such, he attributes the questionable issues mentioned in the Quran to the Prophet as a human being with a knowledge that is limited to the time and space of his life. A representative (Interview D March 2011) claims that if a sentence is wrong, it does not make any difference if the sentence is from God or from the Prophet because it is not acceptable to follow a Prophet who utters a wrong sentence. Therefore, recognizing the Quran as the Prophet's words is not the resolution for Muslims' issues in the modern epoch. In his point of view, the Quran is the direct word from God, since it introduced itself as God's word. On the other hand, the Quran is the prophecy credential, which means that the prophecy of Muhammad is admissible because of the fact that the Quran is understood as a miracle of the Prophet and not vice versa. This recognizes the Quran as the Prophet's reading based on a prophet-centric interpretation, which emphasizes the role of the Prophet more than the Quran.

Therefore in his (Interview D March 2011) point of view, the Quran is the direct word of God even though its language is of the Prophet's time and space. It does not imply any wrongness in the realm of divinity or prophecy, and the Quran still contains its universal and essential values beyond time and space. There are also some verses that only refer to the time or context of when it was revealed to the Prophet. He (Interview D March 2011) also notes that there are some verses in the Quran that are abrogated by other verses. Such abrogated verses have been revealed to the Prophet by God, and will forever be a part of the Quran. It implies that there are temporary and conditional precepts in the Quran, which reached the end of their time with the revelation of the succeeding verses. He explains that considering all precepts as eternal is inconsistent with the concept of abrogation. It should also be noted that many verses in the Quran refer to the afterlife, God and God's characteristics, and other subjects which are to be understood only in religion as no other knowledge is able to discuss such themes. The Quran therefore is not a book of laws, but a book of guidance and morality and therefore a book for all times and spaces.

In the second representative's opinion (Interview E February 2011), it is not necessary to deny the Quran as revelation and to consider it simply as the Prophet's experience in order to justify changing some precepts. He explains that such an interpretation tries to attribute the miscues in some verses to the Prophet's

knowledge limited to his time, not to God. He rejects this argument saying that what the Prophet said was approved by God. He believes that attributing the miscues to the Prophet and not to God still implies an incompetency of God's knowledge. Therefore, he reasons that it is contrary to what is written in the Quran that says the Quran is God's word. It is also contrary to the way the Prophet introduced the Quran. Ultimately he claims that following this argument may provide new interpretations of God, or of revelation which could be totally different from prophecy and Islam. Though he emphasizes that he is still open to new arguments, he finds the traditional perspective on the Quran as God's word revealed to the Prophet more logical.

7.2 Reformists and Global Norms of Justice and Human Dignity

UDHR in the reformist perspective

The reformist view recognizes the Universal Declaration of Human Rights as a practical framework for the abstract idea of justice, whose fulfillment in society is the aim and basis of religion. Since in this perspective being just is considered as the necessary perquisite for the acceptance of religion, if an understanding of religion is in contradiction with the UDHR, its correctness and acceptability should be considered suspicious. However, there are some conflicts between parts of the UDHR and Islamic values in a traditional understanding. Soroush, in clarifying this tension, distinguishes between the 'paradigm of duty/obligation' and the 'paradigm of right' (Soroush, 1381/2002: 53–54; Soroush 2002: 62). The language of religion differs from the language of science and philosophy in that, in the language of religion, "human beings are not the focal point of the discussion, the focal point is God, and the Shari'a revolves around the axis of religion and divine duties" (Kadivar 2011b: 49). Hence, all duties and commandments given by a supremely sovereign authority make a human being a 'duty-bound creature' only, whose main concern consists of identifying and respecting his obligations, which are known as *Shari'a* precepts, in order to "avoid God's wrath and punishment and enjoy worldly happiness and eternal salvation" (Naraghi 2007: 148).

In the modern era, rights replaced obligations and duties, even in the sphere of religion. In this respect, human beings have the right (not a duty) to have and also to choose a religion, while in the paradigm of duty, human beings are obligated to be religious. In this view "the society is seen as a temple whose purpose is to please its creator" (Soroush 2002: 63). By contrast, the "viewpoint of rights envisions society as a marketplace where the aim is satisfying the members. The former pursues the satisfaction of the creator, the later that of the people" (Soroush 2002: 64). Accordingly, the discourse mentioned in the Quran in

comparison with the modern discourse belongs to the language of duties rather than the language of rights, though this is not to say that the language of religion or the Quran deny the rights of humans. But they have focused on duties rather than rights and considered human beings as duty-bearers rather than rights-holders (Soroush 1386/2007: 365–366).

Therefore, traditional and fundamentalist interpretations of Islam are based on an epistemic configuration which is different from, and even contrary to the epistemic constellation and philosophical presupposition of 'human rights', and it is impossible to identify the current concept of human rights in this kind of understanding of religion (Kadivar 2011b: 48; Soroush 1386/2007: 380).

Kadivar also illustrates the conflict between traditional and historical Islam and human rights norms in six instances: "(1) inequality between Muslims and non-Muslims, (2) inequality between men and women, (3) inequality between slaves and free human beings, (4) inequality between commoners and jurists in public affairs, (5) freedom of conscience and religion versus punishments for apostasy, and (6) extra-judicial punishments, violent punishments, and torture" (Kadivar 2011b: 47). He argues that the issue of such tensions is not minor and superficial, and is deeper than simply being the different opinions of various experts on Islamic law. According to traditional Islam, the verses and narratives are the basis for unchanging and absolute precepts beyond time and space which are never abrogated. Regarding the argument that God is just and wise, every single *Shari'a* precept is seen as indubitably just and wise. As a result, such inequalities are legitimate in traditional Islam. Therefore these conflicts need to be debated more and situated in the conventions of the era of revelation (Kadivar 1386/2007: 114–115; 2011b: 57).

For a better understanding of the fundaments of such conflicts, Kadivar distinguishes 'true human rights' from the internationally accepted notion of 'human rights', and argues that

> True human rights are a part of the intrinsic interests that have been fully taken into account by All Knowing God in the formulation of Shari'a precepts. These rights are unchanging; they do not vary over time, in the different stages of the advancing life of humanity and in different locations. The creator of these rights is the Creator of human beings. Performing one's duties and Shari'a precepts is the surest way of abiding by human beings' true rights (Kadivar 2011b: 49).

Accordingly, the best way to identify true human rights is to study the text and the narratives. However, reason, as a source of discovering the *Shari'a* precepts from a *shi'i* [53]perspective, "can take us from one Shari'a precept to a second Shari'a precept that is a corollary of the first precept. This kind of proof is known

[53] Shi'a is a branch of Islam which holds Ali ibn Abi Talib as Prophet's successor, while *Sunni* Muslims believe that Muhammad did not appoint a successor and consider Abu Bakr as first Caliph who was appointed through community consensus (Shura) (Oloruntele 2016).

as non-self-justifying reasoning and it is incontestably accepted" (ibid.: 50). Therefore, the main sources of discovering *Shari'a* precepts are narrated proof and reasoned proof, though that must be non-self-justifying reasoning.

In order to clarify the relationship between Islam and human rights, it is essential to investigate the authority of human reason in discovering human beings' true rights without the assistance of the Shari'a, revelation and narration.

In traditional Islam, human reason is recognized as incompetent to understand true human rights. This idea of the "innate incapacity and congenital faultiness of the human mind" (ibid.: 50) is not limited to the act of assessing harms and benefits in human life, but also considers that the human mind and reason is restricted and incomplete in defining what does or does not constitute justice. Thus, in traditional or historical Islam, the source of defining human rights and justice are confined to the narrations of scripture and the *sunna* which are stipulated in the immutable *Shari'a* precepts. Consequently, inequality based on religion, creed, gender, slavery, or being an Islamic jurist (*faqīh*) is accepted. However, from the traditional perspective, these inequalities are not considered as any form of discrimination; but rather, "they are the very essence of justice" (ibid.: 50).

Therefore, the *Shari'a* precepts are superior to human laws, including the conventions on human rights which are based on fallible and limited human reason and are consequently not acceptable. This is because conventions such as the UDHR are based on a thought system which recognizes the relative capability of human reason to identify and assess harms and benefits, as well as human needs. 'Self-justifying critical reason', as an outcome of modernity plays an essential role in defining human rights. Therefore, all conventions on human rights are products of the'collective reason of contemporary human beings. Similarly, this thought system upholds the capability of human reason to define the criteria of justice; hence, the justice or injustice of human relations and laws can be assessed by collective human reason. Concisely, traditional Islam is based on narrated account and the human rights system relies on reason; therefore, the tension can be regarded "as a conflict of narrated words versus reason (*naql wa 'aql*)" (ibid.: 52–53).

In the reformist interpretation of Islam presented by Kadivar, which he calls intellectual Islam or Islamic modernism in his article on human rights, believing in the eternal message of God's revelation emphasizes that the sacred message is riddled with the customs and conventions of the revelation's era. Therefore, the conflicts between historical Islam and modern concepts such as human rights originate from time-bound customs, which demonstrates itself in the *fiqh* of social transactions. Therefore, in this modernist Islam, the main attention is on faith, morality and worship rather than the *fiqh* of social transactions. The advocators of intellectual Islam believe in a traditional Islam, but they claim that the part of the *fiqh* of social transactions has become the main part of Islam and overshadowed the realms of faith, morality and worship. They do not deny the need for Islamic jurisprudence, though their view on this is critical in that they

underline how the precepts of this realm must be assessed through the three criteria of justice, rationality and the ability to fulfill the species' interests by the conventions of the time. Hence, in the case of conflict between a narrated proof and a rational proof, it is the task of rationality to reassess the narrative, i.e. the rational proof is preferential over the narrated proof. As a result, the new *fiqh* of social transactions, or in other words the jurisprudence of human interactions downsizes in this perspective (ibid.).

The concept of considering the rational proof as a yardstick for narrated proof is not new, but has been presented by Islamic *Mu'tazili* and *Shi'i* scholars, who believe that God must act justly, as Kadivar explains. From their point of view, "narration-based Shari'a precepts can be abrogated by the rulings of definite reason" (ibid.: 65). Kadivar notes that "the position of Islamic experts who view reason as one of the four legitimate proofs in connection with the Shari'a effectively means that a narration-based Shari'a precept can be abrogated by a reason-based Shari'a precept" (ibid.: 65–69).

In addressing the issue of conflicts between traditional Islam and human rights, since the characteristics of human rights as given in the UDHR and applicable to all six areas as identified by Kadivar (see above) are more rational, just and preferable, in comparison to traditional *fiqh*, the precepts of historical Islam on these issues are not acceptable and must be abrogated. It is clear that "equal rights for all and the rejection of discrimination on the basis of religion, gender, slavery and religious expertise, as well as on freedom of religion and thought and the rejection of extrajudicial and violent punishments and torture" (Kadivar 2011b: 70) are more in accordance with justice, rationality and the exigencies of the modern era.

Kadivar elaborates on the process of evaluating compatibility of precepts of *fiqh* to the notion of human rights. He distinguishes two sets of perspectives in the Quran and *sunna*. The first view is compatible with human rights and consists of the propositions that are consistent with the notion of human rights, as well as the propositions that explicitly acknowledge human rights for human beings only because of being human. In such cases, "the narration-based proofs are fortified with reason-based proofs" (ibid.).

Kadivar explains that the second set of narrations is irreconcilable with human rights, including propositions and textual support that are in conflict with human rights, such as: defining unequal rights based on religion, gender, religious knowledge; the legitimization of slavery and unequal right for slaves; legitimation and support for violent and degrading punishment; and the rejection of freedom of religion. For such narrations, reason-based proofs are applied as criteria for assessing the applicability of the precepts in the current era. More precisely, in Kadivar's words, "the argument of reason, corroborated by the narration-based proofs of the first set, abrogates the narration-based proofs of the second set, which conflict with human rights, and reports that their terms have expired. With the expiry and abrogation of the conflicting proofs, the conflict itself is fundamentally resolved" (ibid.: 71).

Accordingly, the UDHR is acknowledged by reformists as an international legal set of criteria to protect human dignity, though they believe it is not complete and perfect, but rather needs improvement. They also recognize that some paragraphs are contrary to the traditional *fiqh*; but in their points of view such conflicts are with the non-essential and temporary precepts, which must be altered in order to fulfill egalitarian justice (Interview D March 2011; Interview E Feruary 2011; Interview F May 2011).

The first reformist representative (Interview D March 2011) Criticizing the UDHR, refers to the Universal Declaration of Duties and Responsibilities, which does not refer to religious duties at all; however, he posits that the Universal Declaration of Duties and Responsibilities refers to inter-human duties, placing them before duties towards God, nature, the environment, and the observance of public morals. He explains that there is nothing in the UDHR that prohibits insulting prophets or hate speech against religious beliefs. Nor does it restrict the absolute freedom to nudity which he believes violates the basis of family. In this sense therefore, while he believes that human rights are just, moral and rational, he also believes that they are not perfect and are not immune to mistakes. He believes that rights need to be understood from a critical perspective, so that they can be enhanced to accommodate certain nuances. Moreover, he also explains that although the UDHR is a product of the West, it is an intellectual product of collective reasoning, evolved in the course of time which could be considered applicable to all human societies. He cites six contradictory ideas between traditional Islam and the UDHR: gender discrimination, slavery, clergy discrimination, freedom of religion and belief, religious discrimination and punishment of execution for apostasy, and the violent penal system. He claims that the UDHR is closer to the true essence of Islam than is believing in and justifying these realms of discrimination.

In this regard, the second representative (Interview E February 2011) recognizes the UDHR in its current form is a universal, practical set of criteria for supporting individual rights which are not based on a certain religion or culture. He considers the UDHR as a result of human efforts throughout history to prevent wars and discrimination. Therefore, the realization of the UDHR at the international level, as an international law – despite its imperfection – would be an important step towards creating peace and equality. However, some of its articles are contrary to traditional *fiqh*, even with the acknowledgment that these precepts of *fiqh* are changeable.

In the third representative's point of view (Interview F May 2011), the UDHR in its current form is an adequate framework to protect human rights and could be a foundation for all constitutions. He explains that today, the philosophical principles of human rights are less discussed, since they seem to be perfect, though in Soroush's view they need still to be challenged. He (Interview F) recognizes all paragraphs of the UDHR, in so far as they protect and uphold human dignity. However he emphasizes a religious interpretation of human dignity; that is, a dignity derived from the thesis that humans are a part of God, and therefore, human beings are honorable.

CEDAW in the reformist perspective

Since the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is recognized by reformists as an effort to eliminate discrimination against women in fulfillment of justice, it is necessary that it be enforced in society. Similar to the UDHR, they have some critiques on CEDAW, though these vary depending on their view on physiological differences between men and women.

The first representative (Interview D March 2011) considers the CEDAW as a general document that prescribes gender equality in all affairs, regardless of physical and biological differences between men and women. In explaining his point, he draws an example from sports, saying that rules will always be different between sports played by women and those that are played by men, and these differences have never been thought of as inequality; variations in the rules are because of physical differences. Similarly, he reasons that labor and employment rules must be different between men and women. For example, women should work fewer hours than men precisely because of their physical differences, rather than justifying it based on women's lesser intellectual capacity. Nevertheless, he points out that CEDAW is very abstract and does not put much emphasis on physical differences. He also challenges provisions in CEDAW on co-education, saying that in practice, the better and more expensive colleges, for example in the USA, are single-sex colleges. He also says that since he is against discrimination he supports CEDAW, as it contains some positive rights such as equal rights to marriage, divorce and guardianship of children.

The second representative (Interview E February 2011) says that, similar to the UDHR, CEDAW contains some articles which are incompatible with traditional *fiqh*. Since CEDAW, in his point of view, aims to eliminate inequalities against women, it would be closer to the essential aim of religion – the fulfilment of justice in today's world. Since Islam is based on the essential equality between human beings, all conventions that aim to respect to human dignity is compatible with Islam and should be enforced in Islamic society.

Similarly, the third representative (Interview F May 2011) recognizes CEDAW, and emphasizes the elimination of all forms of discrimination, whether to women, children or those with other religions. In his view, discriminatory cases should be deliberated to figure out the basis of the discrimination. He distinguishes discrimination from difference and says discrimination refers to a situation in which two persons deserve to have equal rights but one of them is deprived of such rights because of unsubstantial reasons. He recognizes discrimination against women for historical, economic and subsistence reasons, which are rooted in old myths and inaccurate and incomplete insights which should be acknowledged and destroyed. He believes that CEDAW is an effort in this direction.

7.3 Women's Rights in the Reformist Perspective

Reformists distinguish the essential precepts from non-essential creeds in Islam and attribute most of women's rights to the second category, which means such precepts must be changed based on justice and collective reasoning. But reformists vary in determining the boundaries of the essential precepts on women's rights. They also differ from each other in their arguments and justifications for women's rights, which does not make it possible to arrive at a specific and stipulated reformist perspective on women's rights.

Women's rights in Shari'a

Kadivar (2013) applies the argument for assessing the *Shari'a* precepts related to women's rights according to the three criteria of being just, rational and superior to other methods. In this manner, he recognizes two categories of narrations in the Quran and *sunna* about women's rights. The first group is composed of narrated-proofs, which refer to equality between men and women, granting them the same rights without any legal difference; while the second category suggests the superiority of men over women, and thus defines more rights for men, though also making them responsible for the protection of women.

Kadivar (2013)also posits that the verses indicating equality fall into five groups. The first group of verses implies equality in creation, which consists of all verses that maintain that man and woman have the same essence, and that there is a non-gender-based supremacy in creation – for example: *O mankind, indeed we have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted* (Quran 49:13), and *O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed Allah is ever, over you, an Observer* (Quran 4:1).

The second group refers to verses on equality in which gender does not influence salvation and the way that God treats men and women, such as *Whoever does righteousness, whether male or female, while he is a believer – We will surely cause him to live a good life, and We will surely give them their reward [in the Hereafter] according to the best of what they used to do* (Quran 16:97). Another example can be seen in:

> *Indeed, the Muslim men and Muslim women, the believing men and believing women, the obedient men and obedient women, the truthful men and truthful women, the patient men and patient women, the humble men and humble women, the charitable men and charitable women, the fasting men and fasting women, the men who guard their private*

parts and the women who do so, and the men who remember Allah often and the women who do so – for them Allah has prepared forgiveness and a great reward" (Quran 33:35).

The third group of verses refers to the responsibility of men and women to protect each other (9:71): *The believing men and believing women are allies (protectors) of one another. They enjoin what is right and forbid what is wrong and establish prayer and give* zakah *[regular charity] and obey Allah and His Messenger. Those – Allah will have mercy upon them*.

The forth group deals with the verses related to equal rewards and punishments in this world and hereafter mentioned in the Quran (48:5, 6, 25; and 57:12–13; also 5:38 and 24: 2, 26, 31).

The final group focuses on equality in married life, such as: *they are your garments and you are their garments* (Quran 2:187), which also evinces equal shares for spouses in their shared life, and *And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought* (Quran 30:21). Kadivar emphasizes the source of tranquility, love and mercy as a logical foundation of family (Kadivar 2013: 214–216). This point is also emphasized by Muhammad Abduh, who distinguishes the image of women and women's rights in the Quran from what *fiqh* presented. For example, despite how such love and mercy was avowed between men and women in this verse, the jurist definition of marriage considers marriage as "a contract that renders the female vagina the property of a male" (Abu Zayd 2013: 153.. Therefore, he emphasizes the responsibility of *fiqh* for downgrading women's status from the high level it has in the Quran (ibid: 154).

Regarding the first category of narrated proofs for gender equality, Kadivar does not refer to any narrations from the *sunna* and restricted his five types of verses indicating gender equality to the Quran.

Narrated (textual) proofs for the superiority of men over women

Kadivar (2013) refers to four main verses from the Quran and two *hadiths* mentioned by the Prophet and Ali[54] that are inconsistent with equality and which uphold men's superiority over women. These are as follows:

"Divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this [period] if they want reconciliation. *And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree*

[54] Ali ibn Abi Talib (598–661) was the cousin and the son-in-law of the Prophet Muhammad. He was the fourth caliph from 656 to 661, but the *Shi'a* Muslims consider him as the rightful immediate successor to Prophet (New World Encyclopedia).

over them [in responsibility and authority]. And Allah is Exalted in Might and Wise" (Quran 2:228).

"And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned and for women is a share of what they have earned. And ask Allah of his bounty. Indeed Allah is ever, of all things, knowing" (Quran 4:32).

"Men are in charge of women (the protectors and maintainers of women) by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance – [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand" (Quran 4:34).

"Is then one brought up among trinkets, and unable to give a clear account in a dispute (to be associated with Allah)?" (Quran 43:18).

The two hadiths to which Kadivar refers are:

1. From the Prophet Muhammad as mentioned in the Bukhari collection[55]:

> *…the prophet said: people who entrust their affairs to women will never know prosperity and find salvation.*

2. Attributed to Imam Ali in *Nahj al-Balagha* after the Battle of the Camel:

> *O people, women are inferior to men in faith, in wealth and in reason. The Proof of their deficiency in faith is that they do not pray or fast during their menses, the proof of their deficiency in reason is that the testimony of two of them equals that of one man, and the proof of their deficiency in wealth is that their share in inheritance is half of that of men. So keep away from bad women and be careful with the good ones, and do not give in to them when they are good, so that they do not expect you to obey them when they are bad* (Kadivar 2013: 217–218).

These narrated (textual) proofs have provided the argument for desert-based justice applied by Islamic fundamentalist and traditionalist view to justify unequal rights and discriminations against women. In order to assess these narrated (textual) proofs, Kadivar (2013) refers to the foundations of the rational perspective of Islam mentioned by the *Shi'a* and the *Mu'tazili* (People of Justice) which shall be explicated in the following.

[55] Sahih al-Bukhari is one of the most trusted collections of hadith among *Sunni* Muslims collected by the Muslim scholar Muhammad al-Bukhari. It was completed around 846/232 AH (Koenig and Al Shohaib 2014).

Rational arguments for gender equality

According to the rationalist perspective in Islam, one claimed by both the *Shi'a* and the *Mu'tazili*, "certain acts are either good or evil inherently, that is to say, without a ruling from lawgiver" (Kadivar 2013: 217). They also recognize the capacity for reason, independent of revelation, to decide whether such acts are good or evil.

Kadivar considers rulings related to women's rights to be part of the realm of reason. It means that "when we are absolutely sure that the Lawgiver has not forbidden it, our rational ruling can be counted as a *Shi'a* ruling" (ibid.: 217). Legal justice concerning men and women is a good thing according to reasonable people and practical reason. Legal justice as an outcome of rational faculty benefits the public, which is of interest to the whole human species and is necessary for the maintenance of order in human society. Similarly, legal discrimination and injustice causes harm and corruption, and therefore is condemned by reasonable people as unwholesome and evil. Consequently, legal justice is sought by reasonable people in order to gain beneficial influence and to reject harmful consequences in human society. This is correlated with the *Shari'a* rulings and with God, "because it is a basic principle of the 'People of Justice' that the Lawgiver is reasonable and in fact, is the head of all reasonable people" (Kadivar 2013: 217).

Accordingly, desert-based justice, once legitimate and acceptable, can no longer be of interest to human society; rather it is egalitarian justice which is more compliant with the spirit of the Quran and the essential message of Islam. The basis of defining rights for humans has changed – from being entitled by virtue of membership to social categories such as females, slaves or blacks, to the acceptance of the principle that rights must be enjoyed simply by virtue of being human (Kadivar 2013). He emphasizes that what is important in defining rights is the humanity in both the human spirit and in nature, which is the basis for dignity and respect for all human beings regardless of gender, race, color, religion, political ideology, social status or any other attributes. Therefore, "humans have equal rights because they share this divine essence. Human dignity derives from this shared essence which is also the cause of equal rights. Human beings deserve the same rights because they share the same essence" (ibid.: 224). As a result, legal discrimination is in contradiction with human dignity. Furthermore, Kadivar points to the relationship between justice, dignity and the necessity of legal equality or, in other words, the correlation between dignity and egalitarian justice. In this way, dignity cannot be respected without justice in the form of legal equality for all human beings (ibid.: 225).

According to Kadivar, the rational arguments for justice fortify the textual arguments and narration-based proofs for equal rights as the spirit of the Quran: "these two kinds of rational and textual arguments have restricted the textual arguments for inequality in terms of their time frame. On the basis of these two types of textual and rational arguments as the contextual evidence, the textual arguments against equality are temporal rulings that become situational prem-

ises whose validity has expired" (ibid.: 230). According to this argument, all *Shari'a* precepts related to unequal women's status are debatable; and there is strong evidence that precepts such as "men's privilege and *qiwama* [male guardianship] over women, corporal punishment of a disobedient wife, permitting the marriage of an underage girl, men's right to unilateral divorce, two women's testimony being equal to one man's, a woman's blood money being equal to half a man's, a son's inheritance being twice that of a daughter, men's obligation to pay maintenance and dower" (ibid.: 227) are not eternal and fixed laws. For example, jurists refer to the Quran 4:34 which says, "men are *qawamun* of women because God has favored the one more that the other, and because they support them," to justify men's control over women. The reformists reject two arguments mentioned in this justification: the first is that God has favored men more than women and the second, that men support women with their wealth. Neither of these two causes is valid today, as according to reasonable people the biological, physical and psychological differences between men and women can no longer serve as an indication of men's superior rights. Rather, such privileging of men is just pure discrimination and injustice (ibid.).

On the other hand, economic activities by both men and women in the family and in society are recognized today as a normal phenomenon. Therefore, the second justification that men support women with their wealth is no long valid (ibid.: 227; Yousefi Eshkevari 2013: 203–204). The Quran verses in which God provides this justification give a ruling that is mutable and temporal. In this way, the first part of this controversial verse is debated by both Kadivar and Eshkevari in rejecting arguments for the superiority of men over women, although the second part of the verse which suggests beating women "as the last solution for bringing a rebellious wife back to obedience'" (Abu Zayd 2013: 163) is not brought up in this debate.

Egalitarian justice and women's rights in the family

Reformists, as in other streams of Islamic thought, regard justice as the main objective of religion, and thus every *Shari'a* commandment should be an interpretation of what justice entails. Therefore all precepts in the realm of human interaction have to be based on the principle of justice. The family is one of the most important foundations of social and civic institutions, which should realize a justice-based relation between members of the family and provide access to all human resources and rights. The necessity of debating and defining relations in the realm of family in the modern era is obvious, especially with regard to the essential role of family in Islam, as well as the considerable changes in the concept of family and the governing rules of its members over the course of time.

In pre modern society, "family organization had a pyramid-like structure, with a man as the head; he had the authority over women and children. Family mem-

bers were naturally assigned rights in accordance with the patriarchal ethos on which the social order was based" (Yousefi Eshkevari 2013: 195). But this pattern of family cannot answer the current exigencies; therefore, Eshkevari suggested a form of family as "a joint enterprise (*mulk musha'*) in which no one – husband, wife, children or others – is distinct from others in essence or natural rights" (ibid.). Rights are based on what is recognized as good practice in our time and according to collective human reasoning. It means these rights are based on local- and time-bound definition of justice, which is an outcome of the best accepted practices of the time or the convention of the time (*'urf al-zaman*). The convention of time (*'urf*) "represents the sum collective knowledge and accumulated experience of successive generations" and is recognized as a primary criterion for the understanding of justice in various eras (ibid.: 196). Therefore, there is not any eternal and fixed definition of justice, in spite of being one of the fundamental concepts in Islam, but rather it is according to the definition of reasonable people and based on conventions of the time. As a result, all *Shari'a* non- worship commandments on women's rights, which are related to social interactions, cannot be eternal and immutable, but rather should be redefined based on the criteria of justice and collective human reasoning.

Approach to the legal instructions related to women's rights

According to the first representative (Interview D March 2011), reformists should utilize the potential of Islamic traditional thought because most people in society follow traditional perspectives so as not to violate people's religious sensitivity. A successful reformist effort to present an interpretation of Islam compatible with modern concepts like women's rights must consider people's religious sensitivity, as well as the fact that society is transitioning from traditional to modern. Thinkers should facilitate this transition by being conscious about traditional paradigms, while also taking small and easy steps in introducing alternatives.

He (Interview D March 2011) explains that in the traditional perspective, there are some positive points for women's rights that are ignored because of patriarchal thought; for instance, the economic independence of women which is clearly mentioned in the Quran. This precept is unchangeable and could be applied today to defend women's right to employment, as well as to challenge the need for a woman to have her husband's permission to work.

The interviewee D also says that according to traditional *fiqh* and perspectives, a woman has the right to demand wages for everything she does in her husband's house, such as cooking, washing, sewing, and even for nurturing the children. This wage is different from alimony which the husband is obliged to pay. He gives an example and says that the husband should pay his wife as much as he would pay a maidservant. However, this aspect of *fiqh* is currently ignored, especially regarding women's financial rights in the case of divorce. Women usu-

ally have no knowledge about their rights and Islamic jurists *(foqaha)* find it advantageous for men to maintain their silence on such positive rights for women in traditional *fiqh*.

Another example is men's unilateral right to divorce which he (Interview D March 2011) claims, is not mentioned in the Quran. Since man and woman have equal rights to get married, accordingly they should have equal rights to divorce.

Another example is the appointment of women as judges which, he explains, pertains to equality between men and women in non-criminal laws. The argument about criminal cases has always been about women's ability to make sound decisions. While there is no prohibition against the entry of women into the judiciary, women generally do not choose this field. He explains that in many cases the traditional *fiqh* has the capacity to reconcile with women's rights. Only in the case that applying such women's rights is unsuccessful using traditional *fiqh* would speaking of a new solution become necessary. Below is an explanation of his point of view (Interview D March 2011) on some Islamic laws related to women's rights.

Polygamy: he recognizes monogamy as the desirable family system in Islam and polygamy is just for exceptional circumstances, which should be severely restricted. For instance, polygamy may be allowed during war when the population of men becomes disproportionate with women; or in the case of a woman's reproductive disability, provided that the woman permits it. However, he rejects polyandry in the case of male reproductive disability saying that polyandry is against human nature and is not allowed even in exceptional circumstances. He compares this to homosexuality, which is not permissible under any condition.

Temporary marriage: in his view, temporary marriage is an Islamic solution to organizing relationships before permanent marriage, in order to prevent 'perverse' and 'swinger' men. Today, however, many married men misuse temporary marriage to satisfy their sensuality which should be prevented through new regulation.

Marital age: in his view,, marital age is related to time and geographical circumstances which should be determined by parliament in every country. He explains that sexual maturity must not be the only criterion for marriage, but equally important are social and economic maturity. Hence he rejects early marriage.

Custody: he says that in general, custody is accorded to the mother since children, up to a certain age, need a mother's care more than a father's,.Athough he believes it would be better if the court decides according to the child's interest, taking into consideration the ability of each parent to provide for the child's needs.

Divorce right: similarly, the family court should decide about divorce, and therefore, men and women have the equal right to divorce.

Head of family: he also rejects the notion that families must be headed by a male. He explains that managing a family is like managing a country; it should be democratic and take the voices of and consent of all parties into consideration.

Woman's obedience to husband: according to the interviewee, in traditional *fiqh*, women's obedience is necessary in a sexual relationship; however, he also emphasizes the importance of consent from both parties to a sexual relationship. He recognizes the patriarchal ideologies of society in the past as the origin of this law, rather than religion.

The right of determining the place of domicile: he says that the woman has the right to determine the domicile in a marriage contract. If the woman did not claim this in the marriage contract, and if the husband is in charge of the family, he has the right to determine the domicile; otherwise, if both wife and husband are employed and there is the possibility of either one losing their job, the court should decide about this matter.

Father's permission for marriage: in traditional *fiqh*, the father's permission is necessary for the marriage of virgin women only. Since in the past women got married so early and without any education, they were not able to recognize their interest and needed their father's permission. However, today women and men are both conscious, and therefore if the permission is necessary, it should be for both men and women.

Women's veiling: he raises some points on veiling. First, he is against compulsory veiling, although regards veiling as required to some extent. Second, he distinguishes between veiling in religion and the law of veiling in a society. The law of veiling should be a result of the expert opinions of representatives, taking into account the culture and social circumstances, and must only be imposed with the consent of women. Therefore, it is changeable according to time and space. Third, he does not recognize equality in veiling for men and women, since in his view they are physically different. Women's body veiling is a permanent law in *fiqh*, which is not changeable. He states that what is mentioned in the Quran refers to the need to cover the attractive parts of a woman's body; therefore, a body's veiling is more important than veiling the hair or the head. He believes that wearing a veil in the West is a matter of adornment, because in the Islamic perspective it symbolizes family honor, which must be maintained and preserved. Fourth, women's veiling is recognized as the outward symbol of an Islamic society. Fifth, he claims that the rate of conversion away from Islam is higher among women than in other religions. One reason for this could be the emphasis on women's veiling and chastity as well as women's rights in the family in Islam.

Stoning: he rejects this form of punishment, though he urges hard punishment in accordance to the norms of the time for adultery, since adultery destroys the foundations of family and is not a common transgression.

Executive tasks such as appointing a woman as judge or president: he points out that there is no prohibition against this, although in practice, women themselves usually vote for and choose men for sensitive and important roles.

Inheritance: he argues that inheritance should be considered along with alimony and *Mahr* (bridal money, dower). While the woman may inherit less than a man, it is the man's responsibility to pay maintenance for his wives. So if in-

heritance law was changed, the law of maintenance must be changed as well, though women usually agree more to alimony than inheritance. He also explains that there are of course single women, which in his view are exceptional cases, and the law must be written based on generality, not based on exceptional cases.

He mentions that inheritance law is one of the most important laws in *fiqh*. This law is mentioned in some exact wording in the Quran, clearly expressing the specifics of inheritance. Therefore, it is difficult to talk about this law. He outlines some details which could be beneficial to women without changing the law. For instance, according to the current law in Iran women only inherit the house and not the land. However, according to his research, this can be generalized to encompass the right of women to inherit land as well. Nonetheless, the inheritance precept could be revised only if expert studies proved that the omission of alimony and dowry and equality in inheritance would be in the interest of women. He said that it is also necessary that women claim and demand this kind of change for it to win the majority in parliament. However, in the current situation, he claims that the inclusion of inheritance with alimony and dowry cannot be considered as discriminatory.

He emphasizes that in discussions about women's rights, the subject of sexual issues and freedom as well as a family's rights should be noted. There are some permanent precepts based on exact wording in the Quran, which prohibit all kinds of sexual relationships out of marriage. Family rights are respected by chastity.

The second representative (Interview E February 2011) points out that based on his methodology for analyzing Islamic social laws, he recognizes all Islamic laws related to women are changeable and impermanent. He emphasizes that such laws require expert opinions according current social circumstances. He adds that although he believes in equal rights for men and women, he cannot instantly accept the equal right to inheritance without expert opinion and the decision of parliament representatives in order to fulfil justice in society.

Interviewee E also recognizes the veiling of women as a changeable law in accordance with the circumstances of time and space, although covering the head and neck presumably originates from the Quran. According to the relation between subject and precept, the subject and the accompanying philosophy have changed from that in the Prophet's time. The justification for women's veiling in the Prophet's time was the prevention of harassment of women. Today however, such reasoning may no longer be applicable; the subject has changed, and therefore, the precept of veiling must change as well.

He (Interview E February 2011), in distinguishing non-veiling from nudity, mentions that historically, women's bodies have been the target for male abuse of women. Therefore, covering the body is necessary for both men and women. He also talks about the observance of privacy as emphasized by religion. This helps to maintain morality and virtue. Hence, covering – not veiling – is a moral issue rather than a *fiqh* precept in today's society.

He also explains that the old system of family in Islamic societies was constructed by jurists (*foqaha*) in their time and space circumstances, which are based on an image of a family with the tutelage and guardianship of a man. Of course such images of family lead to inferiority, non-autonomy and discrimination for women, not only in marital life but also in general. Inequitable laws such as the right to divorce, custody, polygamy, temporary marriage, father's permission for marriage, executive tasks, stoning, and so on, are a result of this perspective of the family and women which must be fundamentally revised and rebuilt according to an Islamic value system based on the current concepts of justice, rights, and equality in today's world.

The third representative (Interview F May 2011) believes that all *fiqh* precepts related to women's rights are contingent and not essential. Being contingent means that they could have taken other forms in other circumstances. All discriminatory laws such as marital age, custody, or the right to divorce are subsidiary and related to exigencies of the Prophet's time and space. He emphasizes that all *fiqh* precepts are temporary, unless it could be proved that they are permanent. This insight is contrary to those of many other jurists, who consider the *fiqh* precepts as permanent, unless it could be proved that they are temporary. In his point of view, all *fiqh* precepts, even inheritance law, which are clearly mentioned in the Quran, are conditioned to outer circumstances. There is no eternal and permanent precept which is based on human nature.

In reference to veiling, he (Interview F May 2011) says that though most jurists recognize it as an essential decree for Muslim women, there is a general decree mentioned in the Quran that says that no Islamic precepts should cause believers trouble or tribulation. He emphasizes that assessing if a precept puts one in trouble or not is an individual decision. Therefore, for Muslim women, wearing the veil must be a personal decision. He also distinguishes the veil from modesty and explains modesty as a feature for Muslim women.

Conclusion

The four subjects resulting from the theoretical framework are applied in this section to discuss the reformist view in this research: 1. the dialectical relationship between individual and structure in general and between human reason as an integral part of individual and religion as a constituent of structure; 2. the crisis of meaning in modern society which resulted from the incompatibility of subjective meaning and objectified meaning; 3. participatory parity of individuals (men and women) in rules and resources in different political, cultural, economic dimensions as well as the foundation of relationships in the family; and finally, 4. the UDHR and CEDAW as sets of global criteria for justice and equal access to rules and resources for men and women, which is recognized by all reformist streams, in spite of all their critiques of both of them.

Dialectical relationship between structure and individual (religion and human reason)

The emphasis on the role of reason in assessing the Islamic legal system is the characteristic feature of the reformist stream; they acknowledge human reason as the most important capital of a human being. Believing in a certain religion is the decision of reason, but human beings do not consist of reason alone. Reason independent from revelation is restricted to calculating the advantages and disadvantages of mundane matters which confines human beings within a limited range. Such constraining reason does not suffice for all human needs; but rather reason alongside faith attends to the different dimensions of human beings. Furthermore, human reason might be shrouded by human desires, ignorance, prejudice, etc., and thus revelation guides reason out of such human characteristics. Revelation and reason both connect God with human beings and cannot be in conflict with each other (Kadivar 1392/2013: 33, Soroush 1381/2002: 102–104). However, at the same time and similar to the need of reason for revelation, revelation needs to be responsive to the time- and space-bound needs of humans, which are determined by reason; for instance, the three criteria of justice, rationality and ability to fulfill the species' interests by the conventions of the time is required to validate *Shari'a* precepts. However, these three criteria ultimately return to the single criterion of reason. Accordingly, the dialectical relationship between reason and religion can be realized in this perspective. The question here then becomes whether or not human reason – collective reasoning in the reformists' emphasis – is able to assess all precepts resulting from revelation independently from the revelation.

To respond to this question, reformists divide the precepts into two categories. One is the essentials, which are those precepts concerning matters of faith, ethics and devotions such as praying, fasting, belief in the afterworld and prophecy, and which are immutable and fixed. In the reformist view, these are beyond the perception of human reason and reasoning in the realm of rationality. The reformist representative, who stands on the boundary to secularism, recognizes this group of precepts as temporary and changeable laws, unless they can be proven to be permanent precepts. Nonetheless, the general reformist view acknowledges these kinds of creeds as the foundation of faith and belief for Muslims, and thus constant and unchangeable.

The second group of precepts – the non-essential – deals with the worldly aspects presented in human interactions and sociopolitical affairs which are time- and space- bound. This realm is allocated to the realm of appraisal of reason in the reformist perspective; thus, the collective reason of humanity is the yardstick of such precepts in Islam. It must be noted however, that reformists do not present a definite criterion for distinguishing the essential from non-essential precepts. For instance, the prohibition of homosexual rights, although it is in the realm of human interactions, is considered as an essential and unchangeable precept (Interview D March 2011).

The question of the authority and independence of reason from revelation in assessing non-essential precepts still remains unanswered. The reactions to this

contentious issue vary in different reformist approaches. The view closest to secularism approves of the authority and independence of reason in this realm. Although they believe in the fallibility of reason, they assign managing this field to collective reason. In fact, what distinguishes them from secularists is that though they believe in the authority of reason, they still regard *fiqh* – especially the essential precepts – as necessary means to achieve the essence and spirit of religion, although in their view *fiqh* only provides a framework for the means to reach religious experience as the essence of religion. For example, in one representative's opinion (Interview F May 2011), *fiqh* today is not able to present any solution for modern social life and is not in the position to replace the need of experts, scientists, managers and philosophers to resolve today's issues. Nevertheless, he still insists on the necessity of *fiqh* and jurists, though with more emphasis on ethical and moral values.

The reformist approach, despite recognizing an essential and strategic role for reason, generally tries to align reason with revelation so that reason does not solely assess the matters of this realm. For instance, in evaluating the matter of human or women's rights, the narrated (textual) precepts from the Quran and *sunna* are divided into two groups – those compatible or incompatible with human or women's rights. The compatible group is consolidated by rational argument; arguments accompanied by textual evidence assess the incompatible group of narrated precepts to affirm that their validity has expired. It means that rational arguments need to be verified by textual evidence. Therefore, this reformist approach does not believe in 'the self-sufficiency of reason' and self-justifying reasoning, which means that reason is not independent from revelation (Kadivar 1387/2008: 41). Hence, the criteria of assessing *Shari'a* precepts cannot be prior to religion; reason is insufficient and in need of revelation.

This method demonstrates the incessant interaction between reason and religion through validating rational arguments by textual evidence and canceling the validity of precepts incompatible with human and women's rights. However, in some cases this reciprocal relation turns into a unilateral relation. In the event that a new concept or new (human) right emerges in the modern world and is affirmed by collective reason, but does not have the support of compatible narrated proof and instead has only some inconsistent textual evidence, the question is whether collective reason in such cases still remains a measuring criterion? A practical example on this issue is the matter of homosexuality, which, as one representative (Interview D March 2011) explains, even if reason accredits this, it is repudiated and prohibited as a permanent and unchangeable precept in Islam. Accordingly, though reason is highly praised in the reformist perspective, where it becomes inconsistent with the essential precepts, it will be rejected.

Another issue is the definition of reason in the reformist view. 'The method of reasonable people' as the criterion for the Islamic legal system demonstrates itself in the common usage (*'urf*) of the age, which means the outcome of the best accepted practices or conventions of the time (Kadivar 2011a: 461; Youse-

fi Eshkevari 2013: 196). However, "the convention of the time – especially the convention of non-Muslim Society – is not attributable in the case of essential precepts and a fixed value of Shari'a" (Kadivar 1392/2013). Therefore, in addition to the ambiguity of the boundaries of essential and non-essential precepts, the definition of 'the way of reasonable people' cannot be a comprehensive definition of reason or collective reason, especially with the stipulation of the conventions of the time in Muslim society. This seems to be aimed more at defending the cultural and Islamic values of Islamic society against non-Islamic values.

For instance, reformists recognize the UDHR as an outcome of 'the way of reasonable people' – though stemming from non-Muslim society – and emphasize the necessity of enforcing the UDHR, including women's rights, in all constitutions. Although reformists argue that women's equality was not imaginable a century ago, today the collective reason and essential Islamic teachings recommend this in spite of being in conflict with some Islamic jurisprudence. Reformists, attributing this conflict to the non-essential precepts, justify such rights as being more in accordance with the spirit and essence of Islam. On the other side, 'the way of reasonable people' acknowledges the UDHR as an effort to protect human dignity, which is affirmed in Islamic teachings as well and recognizes human rights for all because of the fact of being human, regardless of their gender, color, race, religion, nation, physical ability and disability, being old or young, sick or well. However, it is not clear what excludes homosexual rights from the principle of human dignity and what places this in the category of essential precepts. Accordingly, the definition of 'the way of reasonable people' in the reformist view is inexplicit and indistinct.

This ambiguous definition of reason also leads to a confusing understanding of the relationship between religion and justice. Reformists, similar to the *Mu'tazilite*, recognize justice as a criterion for religion and 'a prior principle to religion'. On the other hand, however, the definition of justice and justification of the different approaches to it are matters of reason or 'the way of reasonable people' (Kadivar 2013: 214). In this argument, the relationship between justice, religion, and reason does not seem to follow a logical principle, but rather creates a vicious circle. Justice as a non-religious criterion for assessing the applicability of revelation's precepts is provided by reason, which is insufficient and in need of revelation, but it is vague how justice remains independent from religion.

Since reason in this perspective is not recognized as totally independent from revelation, it is not possible to speak of a constant dialectical relationship between human reason and religion. Though there is such a relationship in some cases and it is disimilar to the relationship described by fundamentalists in which human reason has no authority and is considered a subset of religion, here human reason has relative authority, though it is still dependent on religion.

Crisis of meaning

The reformist stream emphasizes that the spirit and essence of Islam is consistent with some modern concepts and values, such as respecting human dignity, egalitarian justice, human rights, and equal rights for women. In their efforts, they try to present a reading of Islam that considers human time-bounded exigencies. However, the range of this consideration is restricted to the non-essential precepts and there might be contradiction with the subjective values which are categorized as essential precepts, such as homosexual rights or some cases of women's rights, which will be argued in the following.

Justice as participatory parity for men and women in political, cultural, and economic dimensions and in the family

The approach closest to the secular view regards women's rights to participatory parity as new issues in Islamic theology that have never been discussed by any traditional Islamic scholars; the few cases mentioned on this subject represent the dominant culture of the scholars' time, and which need a fundamental shift.

The general reformist view on this subject is to draw out the inequality for women found in the traditional *fiqh*. Only when there is incapacity of the *fiqh* to provide equal conditions, can changes in precepts be considered. While this method initially seems defensible, in practice its results would be disputable.

In fact, every legal system determines rights for individuals based on a certain view and definition of the individual. *Fiqh* also defines women's rights based on a particular definition of and perspective on women. Now the question is whether this perspective considers woman as a mature and knowledgeable individual agent who has the ability to reason and act purposively, or considers her as a person in need of support both in financial and intellectual aspects, therefore taking a patronizing perspective, and putting the woman under the man's tutelage. If defining women's rights is based on such a patronizing perspective, although certain rights might be approved equally, nonetheless equal rights will not be achieved. In such a perspective, women are not able to act purposefully. In accordance with her physiological and biological conditions she is also not able to distinguish between what is good and in the best interest, or evil and harmful. Therefore, the law undertakes the responsibility of such individual decisions for women, defines certain professions for them and prevents them from participating in certain economic activities. This patronizing view prevents the provision of psycho-cultural factors and sociopolitical context to empower women and enhance their self-awareness on the one hand, and on the other provides her with legal-cultural recognition in society. As a result of such conditions, women themselves, following the dominant cultural norms, vote for men in important political positions, in cases where there is no prohibition on the participation of women. As the first representative (Interview D March 2011) claims, women generally do not choose to participate in the judiciary; athough they are

allowed to enter this field, though in practice – at least in Iran – women are still not allowed to be appointed as judges.

The patronizing perspective postulates marriage for all women and argues that the inheritance law should be considered along with maintenance and dowry as a package, which is only valid for married women, so that the single women are marginalized and are recognized as exceptions and the minority. Therefore, the laws in such a view are written only for a patron's decisions and policies, rather based on the requirements of society. The principle of human dignity and equal rights for all people regardless of gender, race, nation, and religion seem to be inclusive only for the group who follow the mainstream and are not for everyone in society. Such a view does not provide social arrangements that permit all persons to participate as peers in social life and prevents this through legal action, which leads to injustice.

The package of inheritance, alimony and dowry as a package for married women only is also questionable. Alimony without the precept of woman's obedience to a husband cannot be imaginable, and both of them together make another package. Women's obedience, as reformists explain, is necessary in sexual relationships, which might otherwise lead to marital rape. Therefore, all precepts of *fiqh* are somehow interrelated with each other; thus the whole of *fiqh* precepts on women's rights should be considered as a set which originates from a special perspective on women. Following the same mindset, familial relationships transform into one of market and a place for transaction instead of being based on a cooperative social relationship embodying love, equality and partnership. In this form of family, traditional role- specific tasks are not altered, so that the father is responsible for matters in the public sphere, and mother responsible for the private sphere following the norms organized by patriarchy. The only exchange undertaken is that members of a family are business partners looking for more profits from each other. Such a family does not provide a place for individual self-realization or for preparing the members to transit into public life in society.

The reformists believe in egalitarian justice, but this justice cannot be realized by finding some solutions or articles in *fiqh* precepts and redefining few of them, such as equal rights for blood money, divorce rights, no longer requiring the father's permission for marriage and so forth. A paradigm shift in the attitude and mentality of society is needed which can in turn change the current patronizing perspective and misrecognition of the autonomous personhood of women.

It seems that the representatives of the reformist view are tending gradually towards full egalitarian justice rather a restricted sense of it. Eshkevari's suggestion of a form of family based on 'a joint enterprise' is an example in this process. This consists of equal rights for members and emphasizes partnership and a community for solidarity, rather than one that is ruled by patriarchal norms. This pattern is based on the idea of fulfillment of justice in the family.

8 Seculars and Human Reason

As mentioned in the previous chapter, it seems that reformists are gradually leaning towards the secular stream, in that they do not stand in a fixed position on the spectrum. Instead they have been moving toward more recognition of the authority of human reason and its independence from revelation. The thinkers discussed in this chapter once presented reformist interpretations of Islam in different ways, for instance, through dividing Islam's legal system into two groups of essential and non-essential precepts. However, they are currently representatives of a new stream of Islamic thought in Iran that acknowledges the futility of *fiqh* for modern human beings and advocate new perspectives on religion and being Muslim. This chapter peruses the viewpoints of major thinkers of this stream of thought, whose opinions have been impressive and influential in the debate and discourse on different interpretations of Islam in Iran after the 1979 revolution.

8.1 Structural Approach to Religion

In the secular view, religion is based on an individual spiritual experience in which Islamic jurisprudence (*fiqh*) is refuted as a set of necessary creeds for conducting the behaviors of human beings with the aim of salvation. Instead, it recognizes the necessity of defining guidelines in the realm of human knowledge in every era.

Rational reading of Islam vs. text-based reading of Islam

Mohammad Mojtahed Shabestari[56] (1389/2010) speaks of two definitions of being Muslim based on two interpretations of Islam. First is a text-based interpre-

[56] Mohammad Mojtahed Shabestari (born 1936) is an Iranian philosopher, *Shi'a* Islamic theologian, writer and professor at Tehran University. He earned the certificate of *Ijtihad* – the highest degree in Islamic religious tradition – from the theological seminary of Qom after 18 years of studying different courses including Islamic philosophy, theology, jurisprudence and exegetical methodology. In 1970 he became director of the Islamic Center in Hamburg, where he learned German and supported the Christian-Islamic dialogue. There, he had opportunity to engage in dialogues with a number of intellectuals and religious representatives from around the world, challenging modern philosophy, theology and religious knowledge. Upon returning to Iran in

tation which has been the dominant interpretation in all reformist streams and religious intellectual efforts over its history in the last 150 years.

In this view, the Quran and *sunna* (tradition) as God's words or as reflective of God's words must be read, understood and applied in human life. The human being identifies himself as Muslim, though the definition of being Muslim is determined by history. It means that everything in history which has been understood as Islam and all historical events which have occurred in the name of Islam provide and determine a definition of being Muslim, in the way that being Muslim means a commitment to following the definite set of rituals and precepts which have been provided in the course of history. But the Muslim individual lives in the modern era and confronts modern concepts which, on one hand are inevitable in his/her life today; and on the other, are, in some cases, inconsistent with the Quran and *Sunna*. In response to this issue, reformists revert to the very beginnings of Islam, attempting to retrieve and redefine the first message. In order to do this, they try to reconstruct the understanding of the Quran and *sunna* (Mojtahed Shabestari1389/2010). Therefore, the reconstruction of understanding plays an important role in this view. Mojtahed Shabestari himself placed paramount importance on reconstruction in the last period of his intellectual life. He tried at this time to understand the first message reflected in Quran and *sunna*, applying a new hermeneutic[57] and re-understanding based on human experience and reason in the modern era. In an interview (January 2011) undertak-

1979 and participating in the revolution, he became a representative in the first Iranian parliament, though due to various reasons, he turned away from politics and joined the faculty of theology and religious studies at the University of Tehran as a chaired professor to teach comparative theology and religion. He tried to maintain his connection with religious institutions in the West through teaching as a visiting professor on various topics such as modern hermeneutical approaches to the major Islamic scriptures and discourses, and the status of democracy and human rights in the very background of legislative foundations of Islam. In 2006, he retired unwillingly during the course of forced retirements in the Iranian education system. [Mojtahed Shabestari, Mohammad. A Brief Biographical Portrait.Official Website of Mohammad Mojtahed Shabestari.Available at: http://mohammadmojtahedshabestari.com/biography.php (18 June 2015)].

[57] Mojtahed Shabestari explains that every text has a hidden reality which requires its interpretation to be discovered. The understanding of a historical meaning of a text required the scientific rules of the hermeneutic approach. The text does not speak by itself; instead the questions raised by the interpreter begin to reveal its content, though such questions were not posed at the time of the text. With this in mind, it is obvious how the questions of the interpreter are affected by his prejudgments, pre-understandings, and prejudices, which place great importance in discovering the meaning of the text. In fact, the questions which derive from human knowledge depend on the interpreter's historical and cultural location, rather than on the text itself; hence they only provide one interpretation of the text. Such questions also can be based on the interests and expectations of the interpreter; so that a particular set of questions provides particular answers which are demanded. Consequently interpretations of a text are different, and focus on various part of the text and omit others; therefore, obtaining a complete final interpretation is impossible and the process of interpretation never ends. In the process of interpretation, it is also important to understand the text in its historical location. In fact, the interpretation is a translation of the meaning of a text from its historical processes and its cultural and linguistic experi-

en for this research project, he said that he has passed this phase of insight, recognizing it as text-based efforts which pursue understanding and reconstruction of God's words in the Quran and s*unna*. All reformist efforts include distinguishing the changeable from the constant precepts; discovering the essence of unchangeable creeds and maintaining them as unalterable, and abandoning other parts of the text as historical; and identifying the distinction between the essential and intrinsic from the contingent and accidental, which are seen as based on a historical definition of being Muslim. Such efforts on one side strive for adherence to God's words in the modern world by upholding the essentials as God's words. On the other side, they seek a solution to reconciling modern concepts with the message and teachings of the text by replacing the inconsistent precepts with new ones and confirming the new precepts as the essence and spirit of the message of the Quran and *sunna*. Such efforts and text-based interpretations have so far been the common point of all reformist thought streams (Mojtahed Shabestari1389/2010).

In this perspective, the text is of utmost importance and freedom from the text would be very difficult. In fact, the text plays three functions, as Mojtahed Shabestari (ibid.) explains, referring to Jan Assmann[58]. The text is primarily a means for storing various interpretations, which is demonstrated when one refers to the text. Secondly, the various interpretations are institutionalized in the text, and thirdly, they provide the future understanding of the text. Accordingly, the reformist efforts to reconstruct the first message of the text cannot be separated from these three functions of text-based reading and cannot claim to deal with the pure text (ibid.).

If a text-based interpretation is the first, the second interpretation of Islam begins from an initial presumption which says that the individual decides to be Muslim and to accept modern concepts such as human rights. Today, humanity faces several ideas, including various philosophical and sociopolitical thought, as well as different religions and the concept that it is the human being who chooses value systems according to his/her demands and needs. Accordingly, a person might choose their own religion and consequently also chooses the content of religion, rather than a religion as a closed set. Religion in this view provides an opportunity to transcend the external aspects and trappings of life, towards the inner aspects and consciousness of life (ibid.). Religion is a means of exploring and looking for the meaning in life which Mojtahed Shabestari calls 'sense of presence' and 'experience of presence'. It is an experience that allows the individual to change his/her situation from a prison-like, limiting condition to another horizon free of such limitations. It is about a reorientation from the self in different dimensions of identity and its historical, social and linguistic selves to another state which is free of such limited dimensions. Such 'experi-

ences into the interpreter's historical context (Mojtahed Shabestari 1375/1996:13–30;Hunter 2009:69; Vahdat: 2010; Alinejad: 2001).

[58] Jan Assmann (born 1938) is a German Egyptologist.

ence of presence' is not a privilege of the elite and people with particular features, but rather it is available to every human being (Mojtahed Shabestari, cited in Vahdat 2010: 200).

In this perspective, the individual is aware that religion is not the only foundation of life; instead, life is based on other aspects and sciences required for today's existence. The humanity of the person is not defined based on religiosity, but rather philosophy, science and ethics, and these are included as various factors for defining humanity. Religion is only one aspect of human life among others with the definite function of providing a value and meaning system, which is freely chosen by the individual (Mojtahed Shabestari 1389/2010).

Regarding the question of why the individual chose to be Muslim, it should be noted that everyone who is concerned with this dimension of life, lives with a particular religious heritage, and it is obvious that this religious heritage be studied, in order to figure out whether it contains what he or she is searching for. Islamic heritage is demonstrated in various arenas of philosophy, jurisprudence and theosophy (ibid.). However, the common aspect of all diverse branches is the belief in *Unitarianian* (*Universality and Unity of God*) (Palmer 2003: xi) and the endeavor for transcendence from the limited customs of daily life to the inner aspects and consciousness. This endeavor is a personal experience for everyone. In this way, all options and sources of enlightenment are allowed, such as Rumi's poetry or the verses of the Quran. It does not mean that religion is derived from Rumi's poetry or the Quran, but rather that these are facilities that provide a person with the experience of transcendence. Such person is a unitarian, though he determines his/her own unitary experience. In this endeavor, he or she also acknowledges some modern concepts and ideas such as human dignity and human rights (ibid.).

The question here arises why such a person considers him- or herself as Muslim rather than simply a spiritual person. Mojtahed Shabestari argues that such a question comes from a perspective based on a historical definition of being Muslim. Since the Islamic view and *shari'a* have been shaped in the course of time, the definition of being Muslim is based on commitment to the *shari'a*; and consequently non-commitment means being a non-Muslim. Therefore, such questions which are based on the historical definition of Islam and the definition of 'Muslim' should be challenged.

The Prophets' uprisings were always against the traditions of the time and aimed to release people from the habituality of tradition. They invited people to apply their reason and rationality in order to arouse their spirit of truth-seeking (ibid.). The religious traditions have been shaped and gradually institutionalized after the Prophets' time. In an institutionalized religion, God is restricted to its framework; it means God's 'absoluteness' is denied (Mojtahed Shabestari, cited in Vahdat 2010: 215). Institutionalized religion resulted from religious traditions aimed at functioning more to protecting and retaining the identity of the community that followed the particular religious tradition and ritual. Accordingly, the Prophet's invitation and message is reduced to the institution of reli-

gion. Unitarian (movahed) Muslims chooses their demeanor, lifestyles and thoughts by using reason and rationality rather than imitating the institutionalized and habituated traditions. They have their own personal experiences and interpretations of the revelation. Therefore, efforts to impose and dictate a definite interpretation of religion only prevent the individual from experiencing that religion. Consequently, the unitary Muslim does not follow the definition of being Muslim in the way that has been determined by history (Mojtahed Shabestari, cited in Ghobadzadeh and Rahim2012: 343).

Mojtahed Shabestari (1389/2010) argues that even in the *fiqh* perspective, being Muslim is defined by some jurists as believing in unitarian and prophecy, which is compatible with the definition of being Muslim as a conscious and purposeful choice. In this definition of being Muslim, prophecy and revelation do not place an important role on defining and choosing religion. Mojtahed Shabestari insists that in this definition, the unitarian Muslim does not deny the prophecy, though he or she does not acknowledge the assumption that the Prophet brought a definite set of creeds from God and invited all people to fulfill this set of commands in their lives. Instead, it is recognized that the Prophet had a unitarian reading of the world and according to his experience, a divine aid supported him in this understanding and interpretation, so that he refers everything to God. But such an experience is not restricted to the Prophet. In fact, he invited other people to witness such a divine experience. Accordingly, the revelation and prophecy is an invitation to such teachings and experiences rather than a presentation of a set of creeds as something beyond human perception, claiming that the only way to salvation is the fulfillment of this set of creeds. For such unitarian Muslims, the Prophet is the initiator of such an experience and he or she follows the prophet in this sense (ibid.).

The Muslim in this perspective accepts and confirms the necessity of modern concepts, such as human rights, since central to the idea of human rights is the concept of the human being is an end in itself, not a means to other objectives. A human being has the right of freedom of opinion, freedom of religion and other rights. Such rights provide Muslims with better opportunities for divine experiences (ibid.).

Mojtahed Shabestari criticizes reformist efforts which look for modern concepts or their equivalent in the text and say it is possible to bridge some ethical commands in the Quran and *sunna* or other pre-modern texts with current concepts like human rights, which are products of modernity. In this view, ethical commands in the Quran and *sunna* do not have the capacity to confirm modern concepts (Hunter 2009: 72). Mojtahed Shabestari also rejects the reformists' solution to simply disregard those parts of the text that are inconsistent with morality and rationality on the grounds that the text is more than 1400 years old. In his view, a philosophical and scientific analysis of the text is required but it is not in order to discover a definition of being Muslim or various percepts in the text. Applying philosophical methods to understand and investigate the text is contrary to the understanding that the text is a metaphysical text and scrip-

ture. It must instead be treated as a historical text that can be the subject of human studies, such as the philosophy of language. This view looks at the text based on the supposition that a human has spoken or written it (Mojtahed Shabestari, 1389/2010).

Faith and freedom

As mentioned earlier, institutionalized religion prevents religious and unitary experiences for humans, but Mojtahed Shabestari (1382/2003) insists that religion and revelation should evoke this kind of experience in the recipient, for such experience constitutes the core of faith.

He defines faith as an 'inner encounter with God', beyond the legalistic understanding of the text which forces people to do or respect something as precepts from God. In this view, faith is a conscious decision human beings can only make if they are regarded as possessing freedom of thought and free will, faith's utmost conditions (Mojtahed Shabestari, cited in Amirpour 2013). Freedom is the manifestation of the autonomous self (Rajaee 2007: 222). Obtaining outer freedom requires living in a healthy society, where political and governmental facts are in accordance with the individual's freedom of thought and will. Outer freedom is a necessary prerequisite for taking advantage of interior freedom which is a prerequisite for faith (Mojtahed Shabestari, 1382/2003: 37). In fact, freedom is both an end for human life and a means for living based on faith, since "the reality of being human is to be free always" (Mojtahed Shabestari, cited in Rajaie 2007). Because a decision to live based on faith cannot be forced upon a person from the outside, "(a)ll religious dogmas that prescribe what people should or should not believe in are thus not guideposts to true faith, but rather barriers that hinder the free development of faith" (Seidel 2004). Therefore, faith places great importance on both inner and outer freedom. As a result, freedom is ingrained in faith which leads to various experiences of faith – faith pluralism (Dabbagh 1387/2008).

According to Mojtahed Shabestari, faith as a religious experience should be considered the core concept of religiosity in a 'new theology.' Accordingly, religion could provide morality for the modern world (Mojtahed Shabestari, cited in Amirpour 2013). The modern world has its own features which are in conflict with traditional religion and therefore demands a new form of morality and religion.

Rationality and spirituality

Mostafa Malekian[59] (1381/2002) also believes that all people living in the modern era are different from people in traditional societies in terms of ideas and worldviews. They are also cognitively different, with distinct emotional expressions and patterns of behavior. In fact, the modern human is characterized by self-determination and self-legislation which is in accordance with reason and leads to an active subject instead of a passive object, satisfied with an already provided and predetermined interpretation of the world. Self-determination is itself an outcome of rationality and reasoning as the most significant and inescapable elements of modernity, which are in contrast with traditional understanding. The traditional human is obedient to an outer and foreign force. Tillich called this phenemenon "heteronomy,"[60] which is essentially taking something to be true on the authority of another with a blind and unthinking obedience. The modern human being is autonomous and independent, doubting everything and seeking evidence and satisfactory reasons for beliefs (Malekian 1381/2002: 275).

Another characteristic of modernity is desacralization and the reduction of the power of traditional metaphysics; specifically the desacralization of persons, replaced with the idea of 'egalitarianism.' This means to use critical rationality in evaluating the arguments of people who are considered as sacred in a tradi-

[59] Mostafa Malekian (born 1956) is an Iranian philosopher, translator and editor. He studied Mechanical Engineering at the University of Tabriz but dropped out to pursue a degree in Philosophy at the University of Tehran. While there, he felt unsatisfied, so he decided to further pursue theology at Qom and studied there for 18 years. However, he found deficiencies in the theological seminary regarding education, didactics and research but continued to give lectures in philosophy at various institutions, including Tehran University and Tarbiat Modares University. When protests erupted following the 2009 presidential election, he was dismissed from teaching at universities and research centers.
Malekian defines five thought phases in his life. The first stage, which began when he was 17, as an Islamic fundamentalist, lasted for 11 years. During the second phase, lasting five years, he identified as traditionalist. At this phase, he said he was influenced by writers such as René Guénon, Frithjof Schuon, Titus Burckhardt, and Martin Lings, and also non-Muslim traditionalist such as Ananda Coomaraswamy and Wolfgang Smith. In 1987 he entered in the third phase as a modernist Islamist, identifying himself as a religious intellectual, religious reformist and Islamic modernist. He remained in this phase for 10 years until he found Islamic modernism indefensible. Though he emphasizes that the thinkers who defend this perspective have helped Islamic culture, the project itself has logical problems. He turned to Christian existentialism in his fourth thought phase and found consolation the works of philosophers and theologians like Søren Kierkegaard, Spanish philosopher Miguel de Unamuno y Jugo, Gabriel Marcel, and Fyodor Dostoyevsky. Eventually, in 2001 he transitioned into the fifth phase, which he refers to as a phase of 'rationality and spirituality,' and claims that the first cause of human sufferings is the inability of human beings to find a balance between rationality and spirituality throughout history. In most cases, he said that only one or the other could prevail, but that if human beings are able to strike a balance between the two, it would help pacify human suffering (Malekian 1392/2013: 49–54).

[60] Paul Tillich, New World Encyclopedia. Available at: http://www.newworldencyclopedia.org/entry/Paul_Tillich#Theonomy.2C_autonomy.2C_and_heteronomy, (18 June 2015)

tional understanding of religion, and to reject arguments which have been taken as true and valid just because of their sacred identity. Instead, any argument can be valid and accepted, if it provides logic reasons. For instance, Malekian cites Buddha, saying "you must test what I say; if it is correct do it … I am not infallible; I don't think of myself as infallible, you also should not think of me as infallible" (Malekian cited in Sadeghi-Boroujerdi 2014: 296–297).

Another significant characteristic of modernity is uncertainty in the reading of history. The traditional understanding of the history of some religions, including Islam, considers certain events and episodes as sacred, while for a modern human there is a lack of trust in the certainty of such historical knowledge. Therefore, religion in the modern era must be independent from history and historical narratives (Malekian 1381/2002: 275–277).

Modernity is also characterized by its emphasis on 'the here and now', which refers to the concerns of the temporal world, in contrast to the eternal and hereafter, and offering solutions for concrete problem in this world rather than assigning the solutions to salvation and heavenly glories in the afterlife (ibid.: 278). Accordingly, the modern human is more concerned with satisfaction in this world rather than otherworldly rewards. This does not deny the existence of an afterworld, but rather recognizes that the modern individual accepts a particular action because of its function and efficiency in this world (ibid.: 316).

Malekian argues that traditional religion is no longer able to provide the modern human with inner satisfaction. Traditional religion has its own features, such as expecting people to obey religious authority, to trust peremptorily in the historical basis of religion, to live their lives for the sake of preparation for life in the hereafter, to adopt a metaphysical system, to believe in the sacredness of certain entities, and to view their own religion in an absolute fashion (Tavassoli, 2011: 161–62).

Accordingly, the modern human being who wants to be rational faces two choices. First, he or she can abandon religion completely and thereby lose the positive advantages of religion. A second option is that he or she adopts a new form of religion, which Malekian calls 'spiritualism', to replace the traditional understanding of religion. He emphasizes the second choice because of the human need for spirituality, and argues that traditional religion, which once had positive functions, is no longer defensible (Malekian 1381/2002: 365). Spirituality is a form of "rational religion" (ibid: 275) which is applicable to modernity, as well as providing human beings with inner satisfaction, a sense of meaning in life, peace, joy and hope in the here-and-now. It is a religion that does not rely on historical facts as much as traditional religion requires, as it tries to disengage religion from its localities and concrete and historical contexts. Spirituality is also not rooted in text; thus it is not restricted to a certain scripture. Instead it is beyond all major world religions and can provide the benefits of different religions. The spirit of today's world demands that religion serves human beings, rather than humans serving religion (ibid.: 386). Therefore, traditional religiosity is not possible in the modern era, even if it is desired. Spiritu-

al religiosity is possible and desirable because unlike institutionalized traditional religion, it is focused and concerned with the essence of religion, which is, in Malekian's view, spirituality (ibid.: 316).

Accordingly, he suggests a new project he calls 'rationality and spirituality'. Rationality in this perspective is not local and temporal and is not limited to a specific time and space. It is universal (ibid.: 45). Spirituality needs deep and total rationality which means to consider the individual not only as a thinking machine but also as one who confirms and accepts the emotive and conative dimensions. In this view, if the modern human being cannot explain a fact, he/she does not deny it or neglect its values; neither does he/she obey other authorities. Instead, rational reasons are sought, and if they cannot be found, he/she remains silent (ibid.: 277–278). In contrast to most reformists who are concerned about the fading of religion in the modern epoch, Malekian is more concerned for the human being and suffering in this world and says "I am not concerned with the tradition, nor the modernity, nor the civilization, nor any other abstract substance of this sort. My foremost concern is with the human beings who come into this world, suffer, and then leave it" (Malekian, cited in Sadeghi-Boroujerdi 2014: 279). His main purpose in his project is the alleviation of suffering and the achievement of inner satisfaction for humankind. All human achievements including science, religion, philosophy, art, and literature can be employed by human beings and are useful for the realization of this objective. Therefore, his project pursues more individual needs and rights rather than traditional demands of family, culture and religion (ibid.: 280). Yet, his project does not lead to mere individualism, but is rather aimed at releasing the individual from personal inner conflict as well as social and political dysfunctional conflicts, in order to extend individual solicitude beyond the self to other people's suffering and to bear them as if they were their own issues (Memarian 2013). Therefore, Malekian pursues a social relation based on humanity and says "I am very interested in the topic of love and it is something that has not been emphasized in Islamic theology. In Islam and Judaism the emphasis has been on justice. Law overcomes morality. Justice sometimes is compatible with violence but Love cannot be compatible with violence" (cited in Tavassoli 2011: 164).

Islamic law

According to Mojtahed Shabestari (1389/2010), Islamic jurisprudence (*fiqh*) emerged after the death of the Prophet Muhammad and Islam's expansion to provide solutions for new issues and experiences that were not directly addressed in the Quran and *sunna*. He argues that the beginning of the *fiqh* process was based on a definite agreement of how to understand the scripture after the Prophet's death. Accordingly the foundation of this agreement was to find a commandment in the revelation, reflected in the Quran and *sunna*, for every issue in human life. Therefore there was not this specific form of *fiqh* at the time of the

Prophet, and hence it could have been based on another type of agreement; for instance the agreement on understanding the Quran as a book of morality and ethical references and instructions rather than as a book of law.

Another remarkable point which should be noted is that according to Mojtahed Shabestari in the modern context there is no possibility to have direct interaction with the Prophet, and instead what is available today is only a historical heritage which is to be found in the form of historical text. Historical issues are not decisive and determined; instead they lead to conjectures and suppositions which ultimately provide an interpretation of the text and the conditions of the Prophet's era. To understand such interpretations, hermeneutics as a scientific tool is required in order to discover the most historically relevant meanings among several possible meanings (Mojtahed Shabestari 1375/1996: 13). As a result, it is more logical to follow the strong solutions resulting from rationality and human reason in the current era rather than following conjectures and assumptions from history.

Mojtahed Shabestari (Interview January 2011) explains how at one point in his life he believed in two kinds of Islamic *fiqh* – unchangeable or essential precepts and changeable or subsidiary precepts – but now he does not distinguish between Islamic precepts and believes no precept is constant. In other words, he does not recognize any precept as a rule but sees them simply as moral recommendations which could be applied by human beings in their unitary journey.

The reformist approach to religion, which divides religious precepts into essential or unchangeable laws, and subsidiary or alterable precepts, is criticized by Malekian (Interview January 2011) as well. He mentions that such binary metaphors are not confirmed in the scriptures. In the scriptures, precepts are only and wholly unchangeable and essential laws. For instance, the Quran says: *Indeed, those who disbelieve in Allah and His messengers and wish to discriminate between Allah and His messengers and say, 'We believe in some and disbelieve in others,' and wish to adopt a way in between. Those are the disbelievers, truly. And We have prepared for the disbelievers a humiliating punishment* (Quran: 4:150–151).

He argues that a 'believer' is not allowed to believe in just a part of the Quran and ignore other parts related to religious precepts or *fiqh*, noting that such precepts contain only about 500 verses, which is only one twelfth of the entire Quran. Ignoring or providing special interpretations of this part of the Quran is not an acceptable practice of the religion, Malekian (Interview January 2011) argues. He therefore rejects the division of precepts in the Quran into the essential and the subsidiary, and recognizes such practices to be a falsification, and unarguable for even by hermeneutics. Doing so is likely to replace some of the Quran's content with our own theories and perspectives, which in fact contradicts or disregards the trust conveyed by the Prophet when he delivered his message to his believers.

In Malekian's opinion, being religious requires submission forevermore without challenging or questioning. In his point of view, every historical and insti-

tutional religion requires submission, and hence is against rationality. Malekian thinks that reformist efforts to reconcile such submission with rationality are engaged in a defeated struggle, unacceptable to believers from either the modern or secular perspectives (Interview January 2011).

Instead of such reformist efforts, Malekian explains a kind of spirituality which gives believers a philosophy that allows them to search for truth, one that is completely different from having the truth imposed upon them – which has been claimed by the prevailing understanding of religion. The search for truth implies a critical belief, not a blind submission. Such spirituality leads to 'autonomy' or 'self-authority,' rather than accepting other-authority (heteronomy). In historical religion, the believer is obedient to God or a religious lawgiver, while in spirituality, the believer obtains a deep understanding of religion that what one does and thinks is similar to what is expected in a religion (Interview January 2011). Such spirituality leads to rationalism. He believes in the mutual relationship between spirituality and rationality, which implies that commitment to one results in a commitment to the other.

He also argues that if human reason can prove a religious assertion, this becomes rational; concurrently, if human reason rejects such an assertion, it is irrational. But in the case that human reason cannot prove or reject an assertion, it is a kind of 'mystery'. Malekian emphasizes that in such cases it would be better to be silent and let the matter remain neither proven nor refuted, rather than resorting to religion and accepting the religious argument about the mystery (Interview January 2011).[61]

Approach to the Quran

In the secular view, the Quran is considered as a historical human text which is required to be understood through the usual methods for understanding other human historical texts, such as criticism and hermeneutics.

Mojtahed Shabestari (Interview January 2011) argues that, according to a philological approach, a text can only be understood if it is a production of human writing or speaking, since text only has meaning in human language. Now the question becomes: who said and wrote the text of the Quran? If the Quran is a set of words that God sent to a prophet through his angel Gabriel, and in turn the Prophet sent them to the people, the words are independent from the Prophet. This makes understanding the text impossible, since the text is in human language but is not a human production. The important point in Mojtahed Shabestari's discussion (1392/2013) is that a text is formed only by assuming the existence of two minds: the speaker and the listener; the mind-possessor is

[61] This is comparable with what Wittgenstein posits at the end of his Tractatus: "What we cannot speak about we must consign to silence". Wittgenestein, Ludwig. 1990. *Tractatus logico-philosophicus.* London: Routledge, §7.

also a phenomenon formed on and in a particular social-historical background. Mojtahed Shabestari posits that the Quran's text is the prophetical speech of the Prophet, which was inspired by God (revelation) and meant to be shared with the people, and its main content is a monotheistic explication and interpretation of the world. In this regard, the Quran is not revelation itself but a product of it. Therefore, interpreting the Quran as the Prophet's speech is entirely different from interpreting the Quran as the speech and revelation of God himself (ibid.).

Mojtahed Shabestari posits that all phenomena in human language have *humanity*. This means they manifest human features, characteristcs, experiences, perceptions, and desires. Language implies a human lifeworld, and therefore it shows humanity. Even if it speaks of divinity, it is not able to show the divine world; it reflects the human experience of divinity, not the world of divinity itself. Therefore, since the word of the Quran is a linguistic phenomenon, it follows a certain world-view, and defines a lifeworld and experiences that are manifest in a human world and not a divine one. Therefore, the Quran is above all a human *word*. Hence, understanding the Quran requires the usual methods for understanding other human texts and since the Quran is a historical text, it needs a historical critique (Mojtahed Shabestari, Interview January 2011). Interpreting the Quran as the speech of the Prophet is analyzing a historical text produced in a specific historical, cultural and social context, in mutual relation and interaction with its surrounding environment. One can draw out different interpretations of such a text and discuss the truth or falsity of it with others through intellectual debate. On the other hand, if the Quran is interpreted as the speech of God himself, discounting the presence of a located speaker, the dialectical relation of that speech with historical-cultural and social facts, on which a rational understanding is based, cannot be perceived (Mojtahed Shabestari 1392/2013). In this way, the understanding and interpretation of the Quran leads to an exclusive interpretation by a definite group which must be obeyed by other believers, and hence there are no criteria for discerning the falsity or truth of it. As such, only an exclusive group can be responsible and dominant in understanding and interpreting the Quran, and others should have no option but to obey this group's perception and interpretation (ibid.).

Mojtahed Shabestari believes that interpreting the Quran as the Prophet's speech eliminates obstacles of pre-supposed dogmatic beliefs, and makes possible a dialogue between the text and reader in every era. Finally, this kind of analysis facilitates the evolution and completion of the Quran's understanding and interpretation (ibid.). He also emphasizes that every claim that the Quran is a miracle which denies its human features of language, is unacceptable. He also explains revelation as a prophet's reading (interpreting) of the world's phenomena, including nature, history, humanity and society, as God's 'relics' and 'tokens'. The unitarian experience is that all phenomena are appearances of God, manifested in the revelation of the Prophet. Therefore, the Quran is the narrative of the Prophet regarding what God does in the world and how God is manifested in all phenomena in the world. However, not all verses in the Quran are

interpretations of phenomena as God's appearances; some verses are instructions which the Prophet needed to govern over his society (Mojtahed Shabestari, Interview January 2011).

Similarly, Malekian (Interview January 2011) criticizes perspectives that consider the Quran as a direct word from God and as a presentation of the Prophet's experience, and questions how the revelation can be understood and discussed when there is no knowledge or human experience of what exactly happened between God and the Prophet. Moreover, he also questions the kind of methodology that can be applied in such a debate that makes it a scientific one. Nevertheless, he thinks that considering the Quran as a statement of the Prophet explaining his own experience is more arguable and more rational. He believes that when the Quran is interpreted as God's word, it implies he has a human body that can talk, and this view is unacceptable.

8.2 Individual Agency in a Rational Reading of Islam

Human reason

The secular view acknowledges an essential role for human reason in modern society and in the relationship between human beings and God. Mojtahed Shabestari (Interview January 2011) states that throughout history, religion and human reason have complimented each other, though in certain periods one overcomes the other. In the modern epoch, the role of human reason is emphasized more. Human reason is of great importance and is a determining variable in the practice of religion in the modern era. Human beings have had a special need for a relationship with God which has been manifested in the form of traditional religion, especially in some cultures or in the past. However, today, human needs have changed and therefore traditional religion might not be able to satisfy those needs in a modern era.

According to Malekian (Interview January 2011), human reason has no exclusive role in the relationship between God and society, or between God and the individual. He recognizes that there are other factors that influence these relationships, such as the need for religion, and human emotions such as feelings of excitement and even love. He sees humans as having three dimensions: first, the cognitive dimension, or the sphere of rationality which deals with human knowledge; second, the sphere of emotions and feeling, or the emotive dimension; and third, the sphere of will and wishes, or the conative dimension. Human life is governed by these three dimensions, and manifested in human words and deeds. He also highlights the role of reason and says conducting human life through any other resource, such as revelation, is also a decision made by reason.

Changeaility of rights

Since human needs change throughout history, human rights change as well, though some arguments on how to define rights might remain stable. Mojtahed Shabestari (Interview January 2011) affirms that rights are non-constant and changeable, since they are based on human needs, which are also changeable. There are some ethical bases of rights that are constant which, in the course of time, can take different forms. For example, justice as a basis for rights has had different definitions throughout history.

Similarly, Malekian (Interview January 2011) mentions two reasons for the changing nature of human rights in history. Firstly, human beings change in the course of evolution – for example a modern human being differs hugely from a Neanderthal. Secondly, human knowledge has also been continuously changing. Changes in the human sciences alter human affairs and therefore also their rights. Some rights and duties become irrelevant, while new ones emerge. Therefore, there is no revealed origin for rights. Accordingly, religion and local rights are not proper variables that require changing or determining human rights (Malekian, Interview January 2011).

Equality of man and woman in religious doctrine

Similar to other currents of Islamic thought, secularists recognize *humanity* and *humaneness* as the most important characteristic of human beings, in which men and women are similar. As they moving further from reformists on the spectrum, secularists do not recognize the prevalent definition of a personal God, but rather consider the entire universe as a unitarian entity composed of God, human beings and other creatures, in which all elements have an important place in relation to each other. In such a view, gender differences do not play any role.

In Mojtahed Shabestari's opinion (Interview January 2011), since humanity is most important to God, man and woman are equal to God. They are created similarly in their humanity. He explains that men and women are different biologically, but the question is to what extent the psychical and biological structures of man and woman play in determining different gender features. However, he emphasizes such differences do not distort gender equality.

Malekian (Interview January 2011), referring to Abrahamic and some other Eastern religions, explains that such religions believe in a conception of God in which God is defined as a personal creator with human characteristics and emotions such as wrath, satisfaction, pride, etc. Malekian sets himself apart from such believers. While he does believe in God, he recognizes the entire universe as God; therefore all human beings are also God. In other words, he does not acknowledge God as beyond the universe, or as a supernatural creator who simply created other creatures and is independent from them. In this view, there really are no fundamental differences between human beings – neither between men and women nor between people of different races. Malekian (Interview Jan-

uary 2011) emphasizes that there is no doubt that men and women have physical and psychological differences; however these differences do not justify any difference in rights.

8.3 Global Norms of Justice and Human Dignity in the Secular Perspective

UDHR in the secular perspective

The UDHR is recognized in the secular view as protecting all individual human rights, regardless of their religion, which must be a foundation of the constitutions of Islamic countries and other non-Islamic countries. In this regard, understanding human rights as the 'rights of the individual' implies that there is a current lack of individual freedom (Mojtahed Shabestari 1384/2006: 224–225).

In Mojtahed Shabestari's view, the UDHR is used to create judicial insurance for humans and a social framework in support of their freedoms. In this view, the UDHR is the only framework which makes it possible to invite all the people of the world from various cultures and religions (including atheists) to fight and struggle against cruelty, discrimination and aggression. In fact, the UDHR is a means in the modern era to regulate humane relations and to establish order in society (ibid.: 229).

The essence of the UDHR lies in the experiences of the two World Wars and the failure of many democratic systems. This led to the sentiment that humankind must never go through the same experiences again, solidifying the idea that the principles of respect, and the acknowledgement of the grace of human beings should be guarded throughout political, economic and social life, using some distinctive rules and rudiments which can be institutionalized (ibid.: 231).

To cast more light upon this subject, Mojtahed Shabestari refers to the opinion of some Muslim scholars who refute the concept of contemporary human rights and propound an Islamic and metaphysical understanding of rights, instead. They believe that 'Human Rights' should be derived from humanity's general essence which only God completely knows and is described in the Book and embodied in the practices given by the Prophet. This concept of rights has principal differences with contemporary understanding. Those scholars believe that only God himself has established rules and laws as human rights and that human beings are not able to create them through conventions. Defining human rights needs a common source which can establish tradition and norms (ibid.: 235–236).

Mojtahed Shabestari raises two points to counter this argument. The first is that many of the world's people today are reluctant to think and act according to metaphysical rules, for they do not believe in a metaphysical source and meaning for ethics and rights. Public culture in many societies is non-religious and metaphysically-based human rights are unimaginable. Secondly, the fundamen-

talists' belief in the idea that only God can define human rights is based on ideal realities and natural essences that prove the origin of human rights in religious texts. Here a very important question comes to mind about how the various readings of religious texts should be regarded as the basis for the creation of criteria for human rights (Mojtahed Shabestari 1383/2004).

According to Mojtahed Shabestari, human rights are regarded as being without religious limitations, and should be accepted by Muslims on the whole. In such interpretations, especially if analyzed from philosophical and legal perspectives on the early eras of Islam, modern notions such as political and religious freedom as well as other concepts found in the UDHR did not exist. Hence it is impossible to deduct such modern concepts from religious texts. These laws are new forms of respecting human dignity in the modern era, resulting from the historical-social transition of humans from traditional into modern life (ibid.: 184), and which according to Mojtahed Shabestari are not contrary to Islam but are necessary to being Muslim in the modern epoch (ibid.: 74).

Mojtahed Shabestari (Interview January 2011) believes that Muslims should build their political and social life based on the UDHR because society is also composed of non-Muslims who have the right to participate in their own political and social affairs. Furthermore, it is not rational to build a social life based on certain religious precepts because, as history has taught us, it leads to autocracy. Instead, freedom and justice must be the basis for a human consensus, both of which are found in the UDHR. Therefore, in his point of view, the UDHR should be recognized in the constitutions of Islamic countries. Although of course, he points out, different countries can restrict the UDHR according to their ethical values, as long as these are rationally defendable and not contrary to other articles of the UDHR – for example, to prevent sexual freedom to the extent that it is understood in the West (Interview January 2011). Malekian (Interview January 2011) also admits that the UDHR is practical and necessary for safeguarding human rights, though he believes that it requires some revision based on the current knowledge of human beings. For example, the attachment of reservations to the declaration should be changed; since reservations could justify many inequalities exercised by participating states. The second point Malekian suggests is changing 'freedom of speech' to 'freedom of reasoned speech'. This means a person who makes a public speech must have an argument based in reason; thereby the audience members would be respected and it would also prevent dictatorship (Interview January 2011).

CEDAW in the secular perspective

The secular perspective considers CEDAW as an international effort and set of criteria for the fulfillment of gender equality, which should be accepted by all states. However, secularists believe that as a convention, it requires further improvement.

Mojtahed Shabestari (Interview January 2011) considers CEDAW as an acceptable and valuable international effort for promoting equality, though he cannot agree with some of its articles. For example, he criticizes Article 10 of CEDAW regarding education, which calls for "the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim." He says if the sciences can prove that coeducation helps both genders learn to observe ethical values such as respecting the family, not committing adultery, and also preparing the girl for motherhood, he would accept coeducation as well. He emphasizes the importance of maternal responsibility, which he argues is ignored today because of the influence of industrial capitalism, although he rejects bringing up girls to only undertake the role of housewife, to take care of the household and take sole responsibility for the children, which hinders their participation in social and political life of society. Therefore, he believes in different forms of upbringing for boys and girls.

Malekian (Interview January 2011) finds conventions like CEDAW positive and necessary, although he believes that such conventions must not be considered as ultimate solutions to specific issues. Therefore, while CEDAW is considered to be a basis for international standards for gender equality, it should be open for criticism and improvement. However, he notes that some Islamic countries whose religious culture is not compatible with CEDAW have theoretically accepted CEDAW, but do not exercise its principles. He says that only in Islamic countries where a reformist interpretation of Islam – and not a fundamentalist or traditionalist one – dominates, can CEDAW be practically and theoretically implemented (Interview January 2011).

8.4 Women's Rights in a Rational Reading of Islam

Seculars are particularly critical of the fundamentalist view on women's rights. For instance, Malakian (1387/2008) explains that fundamentalists are only concerned about the ritualistic aspects of Islam and cannot see the spirit and the core message of the religion. He also regards this reading of Islam as superficially juridical and that it posits this as the only way to be a 'real' Muslim. They define the whole religion by the juridical aspect of Islam, namely the *fiqh*. Malekian sees this reading of Islam as patriarchal, with three main characteristics: the inferiority of women to men, lawful and juristic privileges for men, and the right to establish parentage for men in the family (Malekian 1387/2008: 323).

Similarly, Mojtahed Shabestari (1384/2006) criticizes the fundamentalist perspective as recognizing jurisprudence (*fiqh*) as the correct basis of being Muslim, and explains that such a view defines women's rights according to a natural order. Mojtahed Shabestari also distinguishes two schools of Islamic thought

regarding natural order, and describes the relevance of human organizations such as family, political systems and economic systems in each of them. He criticizes the first group and explains that they try to percieve a natural order for these systems; it means they try to relate them with the order of creation. From this group's view, family has a natural order in which the division of labor inside and outside corresponds to the divine order. The rights women are (or are not) entitled to are likewise defined by this order. Accordingly, family and society have a natural structure which should be obeyed. Although there are various systems throughout history, only this natural system is legitimate and thus the only one upon which society should be formed. Furthemore, it is only in this case that the family system is in harmony with other approved structures in the universe. Thus, this view considers other systems defining relations between men and women as deviations from the natural system (ibid.).

By contrast, the other school of thought believes that seeking a natural human order in social life, including the family system which is based on physical differences between man and woman, is of no use. It is not possible to declare fixed orders in the field of politics and economics or for the family. This school acknowledges a historical view of family order and the relations between men and women, in the way that any era has its forms of social life and family order. The most applicable and just kinds of contracts and division of labor for common life in every era must be found (ibid.: 502–504).

The historical view does not ignore the physical and psychological differences between man and woman, and unlike the natural view, addresses how existing differences are created in the course of history; thus they are not natural or necessarily acceptable. Historically created differences mean that they have not been formed by a prior program; the first view is that the existing differences of man and woman were decided and definite from the beginning. The historical view, in constrast, explains that men and women have obtained their differences over the course of history. While this has created a certain structure, it can be altered and other forms of structures – for example, other forms of family life with different kinds of labor division and judicial systems – can be put forth. It is possible to reduce existing differences on behalf of justice and equality (ibid.).

According to Mojtahed Shabestari, the fundamentalist view is based on the concept of a natural order in which the family system is defined. In this system, as a primary duty the woman had to breed children to guarantee the survival of the human race. Women had the duty to nurture the family, to provide proper care and to maintain a home for men in order to prepare them for their responsibilities in society. Men were responsible for managing society, creating and maintaining civilizations. In this regard, the woman is not considered as a life partner for man and her only task was to lessen the stress and suffering in life for the man. The fundamentalist approach insists on maintaining this view of the family, claiming that providing equal laws for men and women in the family goes against the natural order created by God, and therefore would be contrary to God's will. In this notion, the duty of the individual was to recognize

the natural order and to act accordingly. Thus it was necessary for women to be obedient to men because this obligation is defined by the natural order of creation (Mojtahed Shabestari 1383/2004: 65). Accordingly, the fundamentalists regard the precepts mentioned in the scripture and tradition as an expression and explanation for the natural order of the family. Consequently, the laws made at the beginnings of Islam are unchangeable and fixed (Mojtahed Shabestari 1384/2006: 502–507). Mojtahed Shabestari emphasizes that this concept should be altered since it is not in accordance with the modern era and modern Muslims' consciences (Mojtahed Shabestari 1383/2004: 66).

Both Mojtahed Shabestari (1384/2006) and Malekian (1387/2008) argue that to understand women's rights in the Quran and in tradition, it is necessary to comprehend the essence and reason for the Prophet's actions. Such arguments based on natural order do not help to gain a reasonable interpretation of the Prophet's deeds. According to both Mojtahed Shabestari and Malekian, there is no doubt that the Prophet of Islam caused some changes to women's rights, but it is important to find out why this took place. The Prophet altered some cruel and unjust regulations and laws about women in his time. For example, he formally recognized the ability of ownership for women, limited the right to previously unconfined polygamy; balanced the inheritance regulations in some ways; and changed the severe unjust and unfair approach of society in his era to make it more affliliated with the perception of justice, directing it toward the understanding of justice in that time.

The general message of the Prophet is that what needs to be balanced or changed in existing regulations needs to be understood, such that it accords with justice (Mojtahed Shabestari 1384/2006: 509–510; Malekian 1387/2008: 334–335).

Accordingly, moving along the path of justice is the cause and source of changes in the field of women's rights. Justice should be defined in every period because we do not have a fixed interpretation for it in any field of politics, economics or family. The intellectuals in each period have the duty to recognize inequalities and to promote new notions and analyses of justice, as well as to suggest proper ways to eliminate inequalities, rather than to justify them by referring to the natural order (Mojtahed Shabestari, 1384/2006: 510).

Mojtahed Shabestari (ibid.) refers to Muhammad Baqer Sadr, one of the contemporary Shiite scholars, who states:

The period in which women had unequal rights compared to men, was a period that the responsibilities of life, and managing family affairs were on the shoulders of men. Social structure required this inequality and according to that structure men had some rights which women were deprived of. If today's woman is to be man's 'life partner' and not only the manager of his internal affairs, jurisprudential laws should be changed according to this role-change. If the burden of family is to be divided between man and woman, man no longer can be the head of family and generally if women are playing roles in the stable development of society shoulder to shoulder with men, they should enjoy rights appropriate with this role (ibid.: 508).

Approach to the legal instructions related to women's rights

Unequal legal instructions related to women's rights must be redefined based on current definitions of justice, regardless of Islamic jurisprudence (*fiqh*).

Mojtahed Shabestari (Interview January 2011) believes that all precepts related to women require revision based on a concept of justice. He refers to patriarchy, which existed in the Prophet's society and was not challenged by the Prophet. He emphasizes the necessity of substituting patriarchal perspectives with a justice perspective for gender, one that is defined by representatives in parliament and agreed upon after expert discussions regardless of religious definitions and precepts.

Similarly, Malekian (Interview January 2011) rejects all discriminatory laws against women and says such laws are not compatible with human reason, nor to moral conscience. In his point of view, differentiation in body and mind must not lead to disparity in rights and privileges, although he posits that if it were possible for individuals to choose their gender before birth, based on knowledge of the positive and negative points of both genders, then unequal rights between men and women would be acceptable. As this is not the case, discrimination against women in terms of their rights, for example, in divorce, polygamy, inheritance, and so on. is unacceptable.

Conclusion

Similar to previous chapters which dealt with fundamentalists and reformists, the secular perspective in this section is discussed by applying the four aspects resulting from the theoretical framework.

Dialectical relationship between structure and individual (religion and human reason)

The secular view, criticizing the text-based interpretation of religion, defines religion as a transcendental experience and different from issues of daily life. It is a unitary experience of the world. In this experience, the individual has an important determining role, for he or she determines that unitary experience and the sources for his or her experience of transcendence. Also in this view, the individual chooses their own demeanor, lifestyle and thoughts, applying reason and rationality rather than imitating institutionalized and habituated traditions. Each person has their own experience and interpretation of the revelation. Therefore, efforts to impose and dictate a definite interpretation of religion only prevent the individual from experiencing religion. This turning away from life as lived according to external expectations, to a life lived according to the individuals' own inner experience is similar to what Heelas and Woodhead (2005) call 'subjectivization', which refers to a shift from external authority offered by institutionalized traditional religions to the authority "rooted in

individual experience and subjective validations" (cited in Granholm and Asprem 2014: 28).

Accordingly, human reason and rationality are of great importance in providing the human being with the source of religious experience that is contrary to institutionalized religion, which can prevent religious and unitary experience. Therefore, according to the secular perspective, religion and revelation should evoke this kind of experience in the recipient. This view considers the human being not just as a thinking machine but as one that is capable of confirming and accepting his/her emotive and conative dimensions, and claims that humans need transcendental experiences and spirituality for life. To obtain this objective, human beings are able to borrow from different sources of knowledge, traditions and means, including various religions, "because of a widespread sense that all religious traditions are built upon common insights" (Vincett and Woodhead 2009: 326).

The secular view discussed here is divided into two perspectives. The first view, represented by Mojtahed Shabestari, acknowledges the unitary experience of transcendence as a definition of religion and recognizes the Prophet as the initiator of such experience, who invites other people to such divine experience as well. Accordingly, the revelation and prophecy is an invitation to access teachings and experiences rather than a presentation of a set of creeds that is beyond human perception, and the fulfillment of these as the only way to salvation. Therefore, this view bases the definition of being Muslim on a unitary experience rather than following text-based definitions. The reluctance to call such a unitary experience 'spirituality' and an emphasis on considering this under the shadow of Islam can be discussed from two intertwined viewpoints.

From the first standpoint, this emphasis posits that such a definition of being Muslim and such rational interpretation of Islam gradually finds its place in prevalent interpretations of Islam in the modern era. Since this interpretation argues the necessity of modern concepts such as human rights and gender equality for Muslim societies from completely different points of view from the current prevalent text-based interpretations of Islam, it can broaden interpretations of Islam for compatibility with current rationality and reason.

On another note, the emphasis on an Islamic framework for this faith and religious experience raises the question of whether this emphasis originates from a kind of fear of losing a religious tradition and cultural background.

Such views bring to the surface new and critical questions and suggest variations on what has been inherited, and are different from traditional forms of institutional religion (see: Webb 2009). In their search, spiritual seekers still require a framework in order to express their perspectives through a reflective process of naming and sharing their experiences with the help of definite religious symbolic systems (see Noble 2011: 30). Of course, the tradition and culture in which one is born can be a source for growth and regeneration and provide a platform for expressing such experiences. Yet belonging to a particular tradition constrains a person to the practices of that community, even when the

person claims to adopt or adhere to some aspects of other traditions that are thought to enrich the spiritual experience. This means for example, that despite adopting teachings from other traditions, one recognizes that one remains a part of the community. This in turn means recognizing distinctions among different religious traditions throughout history, which is problematic because seculars criticize the historical definition of religion. They recognize the superiority of human structure over God as the origin of all religions.

In the second secularist perspective, Malekian argues that the project of rationality and spirituality is aimed at extending the borders of definite cultures and religious traditions. This view is similar to contemporary religious currents of thought in the West on spirituality and esotericism, which are rooted in Eastern religious traditions, mainly Hindu and Buddhist, as well as Islamic mysticism,[62] which have been adapted to the cultural framework and local circumstances (Granholm 2007: 61). Spirituality is understood "as a movement which (arose) in the nineteenth century in conscious reaction against existing forms of traditional religion, particularly the more conservative Christian churches" (Vincett and Woodhead 2009: 320). The movement challenges the "superstitious, dogmatic religious imperative of old" (ibid.) as well as the power of institutionalized religions. Such views do not believe in the disappearance or death of religion in the modern era, but rather they acknowledge the need of human beings for new forms of religiosity to provide inner satisfaction for a human life. These new forms of religiosity comply with the new ideals and concepts derived from rationality and are in accordance to human needs in the modern era (Granholm 2007: 52). Therefore, it pays special attention to modern concepts and the domination of reason and rationality, contrary to traditional religions which rely on the 'supra rational' or 'irrational'. This kind of definition has its own features such as "the decline of the belief in pre-given or natural orders of things" (Granholm and Asprem 2014). In this process, non-reasoning thought and action are replaced by 'instrumental causality', which seeks "reasons for events in the world in terms of material causation" (Granholm: 2007: 62–3). Another distinctive point is the non-belief in a personal God and the lack of emphasis on life in the hereafter, and instead a belief in some form of contact with the divine Spirit in the here and now (Noble 2011: 23).

The other remarkable point is the emphasis of the secular stream of thought on the subjectivization of the experience of religion, which is different from 'individualization'. "Whilst it is true that the subjective turn sees individuals em-

[62] "Islamic mysticism is called *tasawwuf* (literally, "to dress in wool") in Arabic, but it has been called Sufism in Western languages since the early 19th century." It refers to "belief and practice in which Muslims seek to find the truth of divine love and knowledge through direct personal experience of God. It consists of a variety of mystical paths that are designed to ascertain the nature of humanity and of God and to facilitate the experience of the presence of divine love and wisdom in the world" [Schimmel, Annemarie. Sufism, Islam. Encyclopaedia Britannica; Britannica's Public Website.Available at: http://www.britannica.com/EBchecked/topic/571823/Sufism (accessed 21 May 2015)].

phasizing their personal experience as their source of meaning, significance and authority, this need not imply that they will be atomistic, discrete or selfish" (Heelas and Woodhead 2005: 11).

The seculars aimed at attaining an inner satisfaction for human beings and to release the individual from personal, inner conflict as well as social and political dysfunctional conflicts, and to extend individual solicitude beyond the self to altruism. The individual bears other people's suffering as if it was their own issue. Ultimately, it leads to social relations based on humanity and love that are beyond justice. Therefore, this perspective is not restricted to individual human beings but also has a social influence. It seems that the sociopolitical and historical context from which this view arises has influenced the current emphasis on individual aspects of religion. This context has been dominated by a text-based fundamental interpretation of Islam that contains instructions and creeds for all aspects of individual and social human life. In this context, the Islamic government aims to fulfill all Islamic laws in society to attain salvation in this world and the afterworld. Consequently, it seems logical that secular perspectives emphasize the individual aspects of faith and experiences of religion, and also "a neutral stand for governments, even where they remained bound up with the religion prevailing in the country" (Habermas 2008)[63], although this can be at the expense of dealing with some of the current discussions in the West, after the failure of theories of secularization such as the debate on the social role of religion as a moral source in generating solidarity among citizens in a secular society, as discussed by Habermas (see: Reder 2011).

In conclusion, in the secular perspective, human reason and rationality are emphasized as being independent from revelation. Human beings are not only recognized as possessing pure rationality, but also other emotive and conative dimensions, and there is a dialectical relationship between religion and human reason – or in other words, between structure and individual agent.

Crisis of meaning

The seculars do not restrict the sources of human cognition to the dominant religion in a particular society; instead they acknowledge other human knowledge and sciences as sources of cognition. Therefore, subjective meaning is based on various resources of knowledge. On another note, secularists regard the objectified meaning offered by religion is based on rationality. This view does not recognize the Quran and *sunna* as the book and source of law, but rather desacralizes them, defining them as historical human texts which need certain methodologies, such as phenomenology and hermeneutics, in order to be studied and understood. Of course such an understanding is not intended to provide precepts to build the basis of human life upon, though they can provide the hu-

[63] Notes on a post-secular society. Availale at http://www.signandsight.com/features/1714.html

man being with substance for human faith and religious experiences like other resources can. Accordingly, the objectified meaning offered by religion overlaps with the subjective meaning, and hence the crisis of meaning decreases in the secular perspective. In fact, this kind of religiosity or spirituality can be seen as the most appropriate form of religion to fulfil human needs in the modern era.

Justice as participatory parity for men and women in political, cultural, and economic dimensions and in the family

The emphasis on a rational interpretation of Islam leads to the non-recognition of Islamic jurisprudence (*fiqh*) in defining and determining women's and human rights. Similar to other currents of Islamic thought, in the secular view, defining rights must be based on justice, though justice is completely independent from religion and every religious definition. In seculars' opinion, determining women's rights requires expert discussion, but the remarkable point in this view is that Islamic jurisprudence is not allowed to interfere in this subject. This point separates secularists from reformists. Accordingly, the secular interpretation acknowledges participatory parity for men and women in political, cultural and economic dimensions as well as in the family and confirms this as a requisite for justice in society. This view also regards a society in which justice is based on participatory parity for all human beings as a prerequisite for human freedom and important in the realization of faith and being Muslim.

Accordingly, the UDHR and CEDAW are recognized as international standards for the protection of human dignity and human rights which must be guaranteed by all states.

9 Changing Gender Norms in the Dialectical Relationship Between Revelation and Human Reason

Today, incorporating gender equality into law is regarded as a requirement for fulfilling social justice. Accordingly, there are many international agreements that seek to achieve gender equality. Fulfillment of gender equality requires nation states to adopt legislation and programs to provide women and men with equal opportunities, rights, and access to resources in all spheres of life, including economic, political and cultural. Gender equality also entails modifying and changing existing customs, and social and cultural practices that prejudice and perpetuate the superiority of masculine traits, and the inferiority of everything coded as feminine (CEDAW).

Despite the mechanisms that are in place, gender equality remains unfulfilled in different places around the world. In many countries, women remain marginalized in the economic, political and cultural spheres. This can be found most notably in many Islamic countries.

This study is aimed at investigating the perspectives of the main streams of Islamic thought on women's rights and gender equality in modern times, employing a sociological theoretical model based on the theory of structuration by Anthony Giddens, the sociology of Religion by Peter Berger and Thomas Luckmann, theories of justice and recognition by Nancy Fraser and Axel Honneth, and the theory of cosmopolitan norms of justice by Seyla Benhabib. In my conclusion, I will first reconsider the theoretical model and then reflect on those streams of Islamic thought which I analysed. I will then discuss the consequences for the concepts of justice, especially justice based on individual self-determination as mentioned in recognition theories versus desert-based justice.

9.1 The Model for the Dialectical Relationship Between Religion, Revelation, Reason and Individual Agency

It can be concluded from the theories by Giddens, Berger and Luckmann, that there is a dialectical relationship between individual agents, structure and society. Religion, as a factor of structure, defines a framework for the interaction of individual agents by providing rules and resources from its moral and practical

interpretations of what personal and social life should entail, as well as obligations and sanctions. Religion also offers a value and meaning system for the non-material needs of human beings. On the other hand, human beings have an important role in the production and reproduction of rules and sources. Individual agency examines the patterns of interaction through 'reflexive monitoring,' employing human reason and rational explanation, hence the human being does not passively accept all patterns of interaction, but rather questions and rejects them whenever he or she finds them irrational. Therefore, individual agents and structure, as well as religion as an element of structure, have a dialectical relationship. Accordingly, when this dialectical relationship is disrupted, or the value and meaning system presented by religion does not satisfy the human needs of value, meaning and spirituality, a crisis of meaning emerges.

The dialectical relationship between the individual agent and structure – and the relationship between human reason and revelation – has existed throughout history; from pre-modern society to modern society. However, in pre-modern society, because of the undifferentiated and overlapping areas of politics, economics, and culture, religion was recognized as the only legitimate authority to organize and conduct all issues of human life, on both the personal and social levels. In fact, religion provided a rational and meaningful framework for the unstructured and irrational aspects of human life and issues. Therefore, in the dialectical relationship between religion and individual agent, or between revelation and human reason, religion was regarded as the rational offering of a proper value and meaning system to suit human needs, as well as solutions to various and overlapping political, economic, cultural and social issues in pre-modern society. Hence, in pre-modern times, there was no crisis of meaning.

Major changes in the political, social, economic and cultural realities brought about by modernization, development and globalization raised the question of whether religion was still able to offer rational solutions for human needs and issues in modern societies. These issues are characterized by distinct economic, political, and cultural practices, based on their own autonomy, values and norms that are different from religious norms and values. The rational function of religion is to recognize the subsystems' autonomy, and their norms and values as independent from religious norms, while continuing to provide meaning and a value system. Furthermore, it should be noted that both the value and meaning system presented by religion is able to satisfy human needs for meaning, or it is simply imposing its authority on human beings. If religion neglects human needs, the gap, between the subjective meaning made by human beings and the objectified meaning presented by religion leads to an emergence of a crisis of meaning.

As an outcome of modernity, pluralism grants human beings the opportunity to make choices between alternative worldviews, including religious perspectives. Therefore, the functioning dialectical relationship between individual and religion is possible, if religion not only recognizes the agency of and the freedom of choice for the individual, but also provides opportunities in which hu-

man beings can attain self-realization and self-determination. Accordingly, justice in this model means providing equal access to rules and resources of structure and also of religion; in other words, equal access to political, economic and cultural resources and recognition of gender equality in these dimensions as well as in the family. On this matter, the Universal Declaration of Human Rights and the Convention on the Elimination of all Forms of Discrimination Against Women provide practical criteria for the protection of human/women's rights, and helps ensure equal access to rules and resources of structure as well as the fulfillment of gender equality. This leads to individual self-determination for every person in society and ultimately provides life circumstances proper to human dignity.

9.2 Main Currents of Islamic Thought

Insisting that religion is the only legitimate source for defining norms and autonomy for all subsystems leads to a situation that is unacceptable by human reason, which means disruption in the dialectical relationship between revelation and reason. Among the various streams of Islamic thought discussed in this study, the fundamentalist view aims to impose norms, values and authority on all subsystems through the fulfillment of Islamic law without any alteration, which can lead to unacceptable discriminatory laws. This view neglects the self-determination and agency of individuals and enforces pre-determined roles and identities on human beings, which leads to a crisis of meaning.

Fundamentalists aim to put all Islamic law into practice regardless of the modern circumstances of society. In their view, Islamic laws are consistent and eternal, and cannot be interpreted. Any interpretation of the Quran and *sunna* results in modification and changes in Islamic law, which is regarded as innovation in religion and hence is unacceptable. Islamic laws are regarded as just and fair and shall remain just and fair forever because they were revealed by God and adopted by the Prophet. Since God's will is ipso facto just, obedience of his commands as embodied in Islamic law, by all his creatures, leads to the fulfillment of perfect justice. Accordingly, fundamentalists emphasize that Islamic laws are a set of the ultimate and complete teachings and instructions for human life in all aspects, and thus provide human beings with the path to salvation in this world and in the afterlife. Therefore, while modern concepts such as human and women's rights are not explicitly mentioned in Islamic teachings and law, they are concepts that are deeply embedded in Islamic tradition. As such, fundamentalists point out that complete enforcement of Islamic laws in society would ensure the protection of human and women's rights. They argue that all outcomes of human reason would be within the scope of Islam, and hence are reflected in the Islamic laws. All outcomes of human reason and experience that contradicts

Islamic laws are not an outcome of rationality and human reason, but rather illusionary reasoning. Consequently, fundamentalists believe that reason is needed to confirm and understand the revelation's contents, but reason that is independent from revelation is inconceivable; instead human reason is a subset and subsidiary of divine revelation.

In contrast to fundamentalists, Muslim secularists reject the text-based definition of being Muslim and emphasize the role of faith, spirituality and religious experience. On this matter, human beings are regarded as subjective agents who recognize and affirm their identities as Muslims, while also consciously choosing important aspects of religion that they think will enhance their spiritual experience. Secularists challenge the notion of religion as a closed system, defined solely by text-based interpretations. In this way, the Muslim is not a passive believer that simply accepts a historical definition of being Muslim. This means that everything in history that has been understood as Islam and all historical events which have occurred in the name of Islam provide and determine a definition of being Muslim, in the way that being Muslim means a commitment to following the definite set of rituals and precepts provided in the course of history. This perspective regards reason as independent from revelation and acknowledges the autonomy and authority of human reason as a criterion for distinguishing good from evil. Hence, reason is the foundation for defining and determining the rights and laws in modern society, rather than the revelation as manifested in the Quran, *sunna* and Islamic laws. In order to attain religious and unitary experience a healthy society is required where social and political arrangements provide human beings with individual freedom and self-determination. Regarding this, various conventions on human and women's rights and gender equality have become more important, for they respect and protect individual rights in society and promote self-determination and freedom for every person in society. Therefore, such conventions are required for an Islamic society.

Between the secular and fundamentalist perspectives stands the reformist view. The reformists aim to present an interpretation of Islam in which Islamic laws are compatible with modern concepts, such as human and women's rights, though their efforts involve a text-based interpretation of Islam and being Muslim. Accordingly in their interpretation, conventions on human and women's rights are not contrary to Islamic teachings, but must be emphasized in accordance with the essence and message of Islam. This perspective attaches particular importance to human reason and its independence from revelation, though it does not believe in 'the self-sufficiency of reason.' They still acknowledge the need for reason to be guided by revelation. Reason and revelation both connect God with human beings and both are required to live a better life; hence they cannot be in conflict with each other. All three streams of Islamic thought recognize the attainment of justice in society as the aim of religion and prophecy. However, they have different definitions and recommendations for the fulfillment of justice.

9.3 Desert-Based Notion of Justice

Fundamentalists acknowledge a 'desert-based' notion of justice. This means that justice is making sure everything in its place and everyone is given their proper rights. Persons of equal status must be treated equally and are entitled to equal rights, but persons of unequal status must be treated based on their desert. Based on this definition of justice, fundamentalists consider gender equality as a violation of justice and hence unacceptable. Since a desert-based notion of justice is justified by the state of nature, women and men are naturally, in the fundamentalist view, distinguished from and even opposed to each other, regardless of the lack of scientific evidence for such categorization. Fundamentalists employ a 'character dichotomy', and define a set of biological, physical, and mental traits of women that are completely different from men. Consequently, justice requires various and unequal rights for men and women, and the legal system is based on this 'character dichotomy' between men and women rather than gender equality. Therefore, different duties and roles are defined for men and women, which in some cases are endorsed by the legal system, such as defining the head of the family as a role, only men are entitled to. Similarly, other patriarchal norms and role-specific tasks based on the concept of the superiority and inferiority of the sexes in both private and public spheres are recognized in the fundamentalist view. As a result, women have unequal rights and are forced to accept defined roles and duties by a patriarchal system in the name of religion. They do not have any opportunity to define their own identity and to attain individual self-determination.

Equal participation in political and economic life will only be possible alongside legal and cultural recognition, so that these factors are intertwined. However, according to the fundamentalist view, defining rights and laws based on the character dichotomy of men and women naturally restricts access for women to resources in various political, economic, and cultural dimensions, as well as in the realm of family. Accordingly, the desert-based justice in this view deprives women of their human rights and the opportunity to self-realization and a life proper to human dignity.

9.4 Justice Based on Individual Self-Determination Versus Desert-Based Justice

In contrast to the desert-based notion of justice, there is an egalitarian notion of justice which aims to provide opportunities for self-determination for every person, in order that they may achieve life circumstances appropriate to human dignity. In such a society, the individual has the freedom to choose their own faith and is able to attain self-realization and self-determination. This enables and

supports the agency and the subjectivity of the individual in having a unitarian experience and to choose religious content. This notion of justice provides human beings with the feeling of 'dignity' or integrity through patterns of recognition. Accordingly, patriarchal norms, role-specific tasks and authority in the family transfer into equality, cooperation and partnership. Furthermore, the view on marriage as an economic contract between man and woman, so that the man gains household services and sexual ownership over his wife through the exchange of a dowry and maintenance as sale price, would be replaced with a view of marriage as a social relationship based on love which provides emotional support and encouragement in order to attain self-confidence for both husband and wife. Instead of a hierarchical power relationship between a man and a woman, both are able to interact as persons with equal rights, within the family and in society. This kind of relationship leads to self-respect. Ultimately, recognition of differences among individuals that are not based on a 'character dichotomy' helps individuals to develop self-esteem and fosters solidarity. In this way, it provides circumstances in which all human beings can attain self-realization and the feeling of dignity.

Reformists, despite rejecting the desert-based notion of justice and believing in egalitarian justice, differ from secular view in the recognition of individual self-determination. Since the reformist view does not recognize the self-sufficiency of reason but rather posit human reason's need for revelation, reformists cannot recognize the complete independence of reason from revelation. The lack of complete independence disturbs the dialectical relationship between reason and revelation. Accordingly, this view cannot recognize individual self-determination in all aspects and dimensions of life. Reformists do not acknowledge the agency and subjectivity of Muslims in defining the content of religion, but rather regard some essential laws in Islam as unchangeable. They also emphasize how the individual, as a Muslim, should accept and believe in such laws as the essential laws of Islam. Therefore, this view has not been yet totally successful in justifying and accepting all human rights and gender equality in detail, for it has not yet been able to recognize individual self-determination, particularly for women. Nonetheless, reformists have been successful to open a space for debating and accepting human and women's rights in society through their efforts to offer an interpretation of Islam based on an egalitarian notion of justice, which is not only compatible with human and women's rights in general, but also recognizes that human and women's rights are necessary for Muslim society. Therefore, this view has changed some discriminatory Islamic laws in favor of women's rights; though it was not completely successful in changing patronizing perspectives on women. It seems that such perspectives need more debate and should be challenged in the public sphere in order to attain a better understanding of human rights, justice, and gender equality.

A remarkable point is that it does not suffice when a definite interpretation of Islam claims to acknowledge dignity for both men and women. Recognition of human dignity is of crucial importance in the value and meaning system of-

fered by that interpretation. It is important to understand that if an Islamic view that claims to respect human dignity for both men and women still expects the human being to deny self-determination and to passively accept the roles and identity that are predetermined by society and culture, including religion, then it must acknowledge individual freedom and self-determination for the Muslim individual. Therefore, acknowledging human dignity requires the recognizing of the subjectivity and self-determination of individuals.

Gender equality is not conceivable in the fundamentalist interpretation of Islam. Nonetheless, this perspective and its followers and representatives should be challenged in the public sphere in order to show how such insights are unsacred and originate from patriarchal interpretation of Islam. The reformist view has played an important role in Iran after the 1979 revolution in bringing the issues of women's rights and CEDAW into the public sphere, and thereby to enhance the public consciousness on gender equality through endeavors to reform and change discriminatory laws against women.

Thinkers from different streams of Islamic thought, particularly reformists, do not have a permanent and stable position on the spectrum and there has been a slow move towards secular thought, so that reformists gradually tend to give more space to human reason and recognize more autonomy for human reason independent from revelation. Accordingly, the issue of women's rights and gender equality receive deeper debate in the secular view; so that such debate on women's rights have changed from mere reform of some Islamic laws on women's rights to a new view on individual agency and individual rights.

The notable point is that the secular view has surfaced from reformers in their later phases of intellectual life, and they have gradually presented a new interpretation of Islam that emphasizes individual agency and human reason in understanding Islamic teachings. They believe in the independence of human reason from revelation. However, this new view does not mean the reduction of the impact of religion and faith on human life, but rather leads to conscious religiosity and being Muslim in accordance with the human needs of modern times. Therefore, gender equality in this view is not only compatible with Islam, but also necessary in an Islamic society. In the secular interpretation of Islam, one can be recognized as Muslim and enjoy individual self-determination, whether man or woman. It seems necessary that this interpretation of Islam should be discussed more in the public sphere; thereby it gradually finds its place among various interpretation of Islam. Finally, the reformist view should be further challenged and debated in the public sphere to attain pluralistic interpretations of Islam that are compatible with human rights and gender equality.

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