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## Shi'ite Tradition and the Iranian Mujtahids' Reflection on the Question of the Veil

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**Abstract** This paper examines two correlated issues regarding the phenomenon of the veil. Firstly, I intend to analyse the role that the second source of the Shi'ite law performs in defining the limits of veiling. The reason of restrictiveness the Shi'ite narratives regarding women's attire will be explained through a historical lens. We will see how the social context of the formative period of the Shi'ite jurisprudence promoted the definition of a certain standard of attire for women. Secondly, I aim to demonstrate whether and to what extent the Iranian female mujtahids can readdress that standard. The Shi'ite narratives have two specific peculiarities that require the intervention of experts capable of authenticating and interpreting them. Given this dependence of the Islamic law to human reason, in a country governed by fiqh, the access of women to the office of mujtahid, should hypothetically improve women's status. Here, the issue of the veil works as a touchstone for the plausibility of this hypothesis,

**Keywords** veil, mujtahids, Shi'ite tradition, women, Iran

How have Shi'ite jurists interpreted those passages of the sacred texts that address women's attire to establish the necessity of head cover for women? How have the limits of modesty been established by these jurists in a society governed by the Islamic law like Iran? What is the importance of Hadith concerning this question?

The primacy of the Koran over the other sources of *fiqh* and yet its ambivalence in determining the limits of covering for women have been widely discussed by various authors. Some works scrutinise the role of the Sunni Hadith in definition of the limits of modesty. This article is concentrated on Iran and the Shi'ite tradition. In first place, I discuss the importance of the Hadith and its role in determining the women's attire. One of the essential sources that let us imagine the social aspects of the proto-Islamic community, where first Islamic ethic norms were fashioned, is Hadith. However, there are some complexities in the Shi'ite Hadith that bring into play the practice of courageous and innovative *ijtihad* to deal with highly politicized and delicate issues like women's attire. Consequently, I review the Shi'ite Hadith contents from the viewpoint of three contemporary Iranian experts of *fiqh* who have criticised the prevalent opinion of jurists about the women's clothes on the basis of the sacred texts. Their position regarding this matter is significant because they do not have laic approaches to the question, yet they do not exclude the employment of new *ijtihad* in their works. The female absence from the process of formation of the Islamic ethics is an issue underlined by Barazangi in her recent works<sup>1</sup>. Hence, in the third paragraph, I aimed at laying bare the opinions of two contemporary Iranian women who have succeeded in joining the rank of *mujtahid*. I ask, thus, whether these women can have a say in this debate contributing to new interpretations of the sacred texts.

### **The importance of Hadith**

The question of the Islamic veil is one of the recurrent themes of the today's feminist literature. This issue has frequently been examined from the koranic point of view. Numerous comments have been left on the two main koranic verses (24.31 and 33.59) that address the women's clothes and the connotation of Hijab in the Koran<sup>2</sup>. The result of these studies revealed the fact that, like many other practical questions, understanding the limits of Islamic veil is not possible only through the

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<sup>1</sup> N.H. Barazangi, *Women's Identity and the Qur'an. A New Reading*, University Press of Florida, 2004 and N.H. Barazangi, *Woman's Identity and Rethinking the Hadith*, London and New York, Routledge, 2015.

<sup>2</sup> Only some examples available in English: Fatima Mernissi, *Le harem politique*, Paris, A. Michel, 1987, trans. en. *The Veil and the Male Elite. A Feminist Interpretation of Women's Rights in Islam*, 1991, pp. 180-181. Helen Watson, "Women and the Veil. Personal Responses", in Akbar Ahmed and Hastings Donnan (ed.), *Islam, Globalization and Postmodernity*, London and New York, Routledge, 1994, pp. 144-5, F. E. Guindi, *Veil, Modesty, Privacy and Resistance*, Oxford and New York, Berg, 1999, pp. 135-7 and 155. A. Barlas, *Believing Women in Islam*, Austin, University of Texas Press, 2002, pp. 55-6 and 157-8. N. H. Barazangi, *Women's Identity and the Qur'an. A New Reading*, Gainesville, University Press of Florida, 2004, p. 275, E. Anwar, *Gender and Self in Islam*, London and New York, Routledge, 2006, pp. 108-111. U. Hasan, "The Veil: Between Tradition and Reason, Culture and Context", in Theodor Gabriel and Rabiha Hannan (ed.), *Islam and the Veil. Theoretical and Regional Contexts*, London, Continuum, 2011, pp. 65- 70. Manal Hamzeh, *Pedagogies of Deveiling. Muslim Girls and the Hijab Discourse*, Charlotte, IAP, 2012, pp. 30-3. S. Amer, *What Is Veiling?*, The University of North Carolina Press, 2014, pp. 25-8, M. Shahrur, *The Qur'an, Morality and Critical Reason*, Leiden, Boston, Brill, 2009, pp. 292-328.

Koran since the fundamental terms that address the issue are not clear in the koranic lexicon of the two aforementioned verses. Concerning the Islamic veil, the poetic and ambivalent language of the Koran hinders the comprehension of some basic questions; e.g., what is intended for *zina* (ornament, refinery)? What is the extra-linguistic correspondence of *illa ma dhahara minha* (except what [ordinarily] appears thereof) in the verse 24:31? If the Koran has mentioned *juyyub* (bosoms) as the only organ that has to be covered, does it imply that proto-Muslim women would cover their hair, hence bosom was the only part that had to be added to the normal covering of the time, or does it mean that Muslim women had to cover only their bosom<sup>3</sup>? Who are *nisa-ihinna* (their women) mentioned among *mahram*<sup>4</sup>s of a Muslim woman in the verse 24:31? Does it indicate the slaves of Muslim women or other free Muslim women? To whom did *ma malakat* (their possessed) refer at that time and what is its implication today? What does *jilbab* mean? To which reality does the term *khimar* correspond? How can we reconcile the verse 33:59, in which the Prophet's wives were asked to wear the veil to be distinguished from slave women, with the egalitarian spirit of Islam? Is it a non-Muslim women sexual abuse permission? How can we interpret this verse in the context of modern era when we do not have slave women anymore?

Scholars have so far deconstructed these two verses providing in-depth analysis of them. Even the letters of some words have recently come under close scrutiny<sup>5</sup>. Some authors ask about the compatibility of veiling with the egalitarian spirit of Islam. In her work, *Le Harem Politique*, Fatima Mernissi opens a debate on the verse 33:59. She believes that this verse was revealed in correspondence to the situation of Medina of the fifth Islamic year when aggressors molested women. Given that those individuals would justify this harassment maintaining that the Prophet's

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<sup>3</sup> The anecdote of a man of Ansar who met a woman in Medina and slammed into a piece of glass or bone with his face, has been frequently narrated to clarify this issue. Among Shi'ites, this episode has been attributed to Imam Baqir or Imam Ali and is considered as the reason of revelation of the verses 30 and 31 of the Sura An-Nur. This Hadith is quoted as a proof of the fact that the covering of bosom and neck was added to head-cover that had already existed. The confusing question, however, is that if there are some studies that show that at the Prophet's time there was not enough cloth to cover the whole body how can one put such an interpretation on this anecdote? (See L. Clarke, "Hijab According to the Hadith. Text and Interpretation", in S. S. Alvi, H. Hoodfar and S. McDonough (ed.), *The Muslim Veil in North America. Issues and Debates*, Ontario, Women's Press, 2003, pp. 216 and S. Amer, *op.cit.*, p. 42). The detailed study of Amir Hussain Turkashvand, published clandestinely and only in digital format, intends to demonstrate that attribution of our standards of clothing to the Prophet's era is misleading. The Turkashvand's argument is partially endorsed also by Kadivar. They believe that our cautions in covering our body with different garments cannot correspond to a period in which the extreme cultural and economic poverty, the climatic situation and the lack of motivation did not allow people to have more than one un-sewed cloth around their body. See A. H. Turkashvand, *Hijab-e Shari Dar Asr-e Payambar (Sharaitic Hijab in the Prophet's Time)*, Tehran, 2012.

<sup>4</sup> The term *mahram* corresponds to women's unmarriageable kin, e.g. father, brothers, grandfathers, uncles, sons, sons-in-law, etc. The women's relationship with these relatives is bound by the incest taboo. A part from these close relatives, women's relationship with other men is subject to some restrictions. In the verse 24:31, among the women's *mahrams* we find «their women» as well.

<sup>5</sup> Moslem Khalafi discusses about the use of "L" before *yadrabhonna* in the verse 24.31. M. Khalafi, *Baznegareshi Daroon Dini be Hijab* ("An Interreligious Review of Hijab"), *Ketab-e Zanan*, 37 (1386/2008), pp. 75-132., p. 79.

wives were not discernible from non-Muslim women, this verse aimed at protecting the Prophet's honour<sup>6</sup>. Nonetheless, the question is why should Islam authorise such an unbelievable violation of non-Muslim women's rights and what is the sense of such a social cleavage for today's society?

Considering all these comments on the two koranic verses that have posed great challenges to the idea that the necessity of veiling for women is a koranic ordinance, it becomes obvious that the imposition of veil could not have found any justification in the absence of Hadith. The expression *illa ma dhahara minha*, which is supposed to determine the limits of adornment that women can display, is ambiguous. The clarification of this important limit can be done only through an understanding of *urf* (customs) of societies, and Hadith is one of the important instruments that inform us about the *urf* of the first Islamic communities. As a result, hijab, like other *ahkam* (ordinances) in both Sunni and Shi'ite world, found its restrictive version only thanks to Hadith, thus many years after the Prophet<sup>7</sup>. The relations that Muslims have developed with the second source of the Islamic law, though, is anything but linear. Compared to the Koran, applying Hadith to socio-political issues or criticising its application requires greater knowledge in order to be able to distinguish authentic narratives from spurious ones. One needs long training in medieval Arabic, knowledge of chains of narrators and terminology to single out reliable reports. Even among the most cited reports, only an expert can identify *daif* (weak) and *morsala* (unauthentic) narratives<sup>8</sup>.

Some authors have highlighted the problems that emerge with regard to this question in the Sunni accounts. Barazangi in her recent work, *Women's Identity and Rethinking the Hadith*, has underscored the fact that the hierarchy between the Koran and the Hadith has been overturned due to the men's attempts aimed at subjugating women. Hadiths were employed to prove that head cover was necessary for the observation of the principle of modesty<sup>9</sup>. The hierarchy of the four sources of *fiqh* reflects the priority of the Koran to the Hadith and as Barazangi argues, hadiths are supposed to gain authenticity only through a confrontation with the first source of the Islamic law and not the other way around<sup>10</sup>. However, the sacralisation of the Hadith and the fact that medieval

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<sup>6</sup> See F. Mernissi, *op.cit.*, pp. 218-9.

<sup>7</sup> Even though there were some small Hadith compilations in the first Islamic century (like *al-Muwatta* of Malik ibn Anas), their organised collection occurred only in the second century. See S. Ahmed, "Hadith i. A General Introduction", *Encyclopaedia Iranica*, 11 (2002) 4, pp. 442-7. With regard to the Islamic veil, Fatima Mernissi maintains that the Prophet was against the imposition of veil and this garment found its restrictive meaning thanks to the intervention of the second caliph. See F. Mernissi, *op.cit.*, p. 216 and S. Amer, *op.cit.*, p. 22.

<sup>8</sup> Indeed, it was the second source of the *fiqh* that brought into play the professionalism in the field of Islamic knowledge, when the Sciences of Hadith and *Rijal* fell into the exclusive expertise of *ulama*.

<sup>9</sup> N.H. Barazangi, p. vii and p. 11.

<sup>10</sup> Ivi, pp. 6-10.

Muslim scholars, e.g. al-Shafei and al-Ghazali, authorized the abrogation of the Koran by the Hadith<sup>11</sup>, undermined the self-sufficiency of the Holy Book.

It has been said that the first Hadith collections were started to be compiled almost one century after the Prophet's death, but were not completed earlier than the third Islamic century<sup>12</sup>. Ali Engineer observed that the question of the Islamic veil addressed in the Koran corresponded to the situation of tribal women of the proto-Islamic period<sup>13</sup> but then thousands of spurious narratives were forged to satisfy the emerging exigencies of later periods<sup>14</sup>. In her examination of the six canonical Sunni Hadith collections, Linda Clarke has noticed that among thousands of reports there was only one Hadith that addresses the areas of the women's body that should be covered. Although mentioned in the Abu Dawud's collection, this Hadith lacks the requisite chain of reporters and as such is not reliable. However, this report, which had to be removed from authentic Hadith books, has become the shariatic fundament of the Islamic veil<sup>15</sup>.

It is presumed that the existence of such reports in the Hadith collections should be an outcome of a change in the women's social status. The transmitted traditions – the very phenomenon that ushered in the professionalism in the field of the Islamic knowledge – witnessed the activities of the experts of Hadith since the Umayyad period. However, the formation of the four Sunni juridical schools and the one Shi'ite school had to wait the arrival of the Abbasids who, unlike their predecessors, were more interested in the sophisticated elaboration of the juridical matters than in the territorial expansion. It is not for nothing that the Abbasids' period is known as the era of *ijtihad*<sup>16</sup>. The technical language of the Islamic law saw its development under the Abbasid caliphate when methodology became as important as the content in the field of jurisprudence<sup>17</sup>. Nonetheless, when these schools were established women had been already reduced to sexual

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<sup>11</sup> Al-Shafei in his *Risala* did not attribute a significant prominence to the Koran compared to the Hadith since both of them could be referred to as sources of Islamic ordinances. See A. Pakatchi, *Nesbat-e Fiqh va Akhlaq dar Amozehay-e Imam Riza* ("The Relation Between Fiqh and Ethic in the Imam Ridha's Teachings"), *Farhang-e Razavi*, 3 (1392), pp. 27-48. Ivi, p. 32. See also A. Barlas, *Believing Women in Islam. Unreading Patriarchal Interpretations of the Qur'an*, Austin, University of Texas Press, 2002, pp. 64-65 and Z. Mir Hosseini, "Hijab and Choice. Between Politics and Theology", in M. Kamrava (ed.), *Innovation in Islam. Traditions and Contributions*, Berkley, Los Angeles, London, University of California Press, 2011, p. 194.

<sup>12</sup> All six Sunni canonical Hadith collections date back to the III/IX century. See R. Aluffi Beck-Peccoz, "Hadith" in M. Campanini (ed.), *op.cit.*, pp. 127-8.

<sup>13</sup> A. A. Engineer, "Islam, Women, and Gender Justice", in J. C. Raines and D. C. Maguire (ed.), *What Men Owe to Women. Men's Voices from World Religions*, Albany, State University of New York Press, 2001, p. 127.

<sup>14</sup> Ivi, pp. 110-120 and A. Barlas, *op.cit.*, p. 42.

<sup>15</sup> L. Clarke, *op.cit.*, p. 220.

<sup>16</sup> M. H. Kamali, "Law and Society. The Interplay of Revelation and Reason in the Sharia", in J. Esposito (ed.), *The Oxford History of Islam*, New York, Oxford University Press, 1999, p. 112.

<sup>17</sup> A. Black, *The History of Islamic Political Thought. From the Prophet to the Present*, Edinburgh University Press, 2001, p. 33.

objects and prisoners of harems<sup>18</sup>. By the time the Abbasids transferred their capital to Baghdad, women had disappeared from public sphere<sup>19</sup>.

### **Shi'ite tradition and contemporary Iranian scholars**

When we have a historical look at the Shi'ite reports, the difficulties become immense. It has been said that Shi'ites began to circulate their own Hadith literature at the time of Ja'far al-Sadiq (d.765). However, none of those collections has survived. The oldest of the four canonical books of the Shi'ite Hadith is the one collected by Muhammad ibn Ya'qub Kolayni (d. 941) *al-Kāfi fī 'elm al-din*. Therefore, compared to the Sunni Hadith collections, they were compiled with slightly longer distance from the Prophet's time. Not without reason, a while later first doubts about the authenticity of the hadiths that had been collected so far emerged. Shaikh al-Ṭā'efa Moḥammad b. Ḥasan Ṭusi (d. 1067) was one of the first Shi'ite scholars who discussed the problem of the validity of Hadith in his *Oddat al-oṣul* and the methodology of certifying their validity<sup>20</sup>.

Aside from the authenticity of reports, regarding the Shi'ite hadiths we face epistemological problems as well. In the Twelver Shi'ite tradition, Imams are considered “speaking Koran” since they possess divine knowledge. Although the text of the Koran is accessible to everyone, its meaning, after the Prophet, is comprehensible only to the infallible Imams. The latter are even identified with the Koran: both of them are guidance and saviours of human beings. If the Koran is to be implemented, first it has to be understood. Nevertheless, as the holy book has been considered to have seven different spheres of meaning, only sinless Imams can grasp all of its dimensions<sup>21</sup>.

A part from the association formed between the holy book and the Imams, the so-called “Fourteenth Impeccables” are viewed as a single body. They are considered God's proofs (*hujaj*), God's doors (*abwab*), God's tongue (*lisan*), God's face (*wajh*), God's eye (*ayn*) and God's names (*asma'*)<sup>22</sup>. Different stances of the same issue (e.g. those employed by Hassan and Hussein ibn Ali in relation to the Umayyad dynasty, the Ja'far al-Sadiq and Ali ibn Musa al-Reza's approaches towards the Abbasids, and the poverty of the Prophet and Ali in contrast with the wealth of the sixth

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<sup>18</sup> Z. Mir Hosseini, *op. cit.*, p. 193.

<sup>19</sup> R. Aluffi Beck-Peccoz, “Hijab”, in M. Campanini (ed.), *op. cit.*, pp. 141-3.

<sup>20</sup> A. K. Mussavi, “Hadith ii. In Shi'ism”, *Encyclopaedia Iranica*, 11 (2012) 4, pp. 447-8.

<sup>21</sup> M. Ayoub, “The Speaking Qur'an and the Silent Qur'an. A Study of the Principles and Development of Imami Shi'ite Tafsir”, in A. Rippin (ed.), *Approaches to the History of the Interpretation of the Qur'an*, Oxford: Clarendon Press, 1988, pp. 179-187.

<sup>22</sup> M. Kolayni, *Oṣul al-Kāfi*, 4 voll., Tehran, Daftar-e Nashr Farhang Ahl-e Beyt, (1348/1970), v. I, p. 270 ss. In the *Oṣul al-Kāfi* there are different Hadiths that confirm such a unity among Imams. e.g. see *Riwayat al-Kutub wa Hadith wa Fadl al-Kitabohu wa Tamasok bil Kotob* in *ivi*, v. I, p. 68.

and seventh Imams) are not considered signs of contradiction or different ethical standards but attitudes of the same divine nous in its relations with different social contexts. Such an approach to the question of *imamat* obstacles the way of any assessment of how social contexts influenced the Imams' positions and hence their hadiths. This medieval vision has also affected the contemporary Shi'ite fundamentalists' discourses according to which the infallible Imams enjoyed the same mind even though their praxis, in response to their contexts, demonstrated variations<sup>23</sup>.

Due to these issues, here I appeal to three recent Shi'ite scholars who, despite their religious approaches towards the question, do not deny or neglect these problematic aspects of the Shi'ite traditions and who have examined the contents of the related narratives from new viewpoints.

In a study on the veil, Mohsen Kadivar (b. 1959) has so far scrutinised this phenomenon in five articles published on his website under the title *Ta'moli Dar Massa'leye Hijab* (A Reflection on the Question of Hijab). He has studied this issue in the Koran, the Sunni Hadith, the Shi'ite jurists' opinions about women's attire and the Shi'ite Hadith. What I report here concerns only his argument about the Shi'ite Hadith. Kadivar has noticed that there is a quantitative difference in the hadiths of the 5<sup>th</sup>, the 6<sup>th</sup>, the 7<sup>th</sup> and the 8<sup>th</sup> Imams on this issue compared to those of the Prophet and Imam Ali. It means that most hadiths that have come down to us from the Shi'ite Imams on this topic can be traced back from 94 to 203<sup>24</sup>. Even though the quantity of the hadiths of these central Imams derives from the fact that they enjoyed a more adequate context that enabled them to make bigger contributions to the Islamic knowledge, the quality of their narratives with regard to the veil testifies a change in the women's social status. Kadivar presupposes that the women's clothing has gained its restrictive form only in the second Islamic century<sup>25</sup>. However, due to the conciseness of his contribution, he did not provide his reader with further clarification on this change of the Imams' attitudes towards women. To assess this crucial question I had to resort to other scholars who had studied that period.

It is obvious that the reports of those four Shi'ite Imams reflect the social order of the Arab societies of the second Islamic century that differs from those of the Prophet and Ali. Studies confirm the transformation of the Islamic community from the pre and proto-Islamic rural order to urban life under the Umayyad and Abbasid caliphate. Although in the Shi'ite thought, Imams represent the antipodes of rulers of their times who took critical stances against these governors

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<sup>23</sup> See M. Motahari, *Seyri dar Sireye Aeme Athar*, published on [www.motahari.ir](http://www.motahari.ir), (1386/2008), pp. 13-4, 17-8 and 70-1. The orthodox Twelver Shiism tends to justify the differences among the Imams' behaviour. For instance, see how Khomeini refused the substantial difference that exists between the Ali and Baqir's behaviour. R. Khomeini, *Hokumat-e islami*, Beirut, 1970, trad. it. *Il governo islamico*, Roma, Centro culturale islamico europeo, 1983, p. 39.

<sup>24</sup> See M. Kadivar, *Ta'moli Dar Massa'leye Hijab 2 (Hijab Dar Rivayat-e Shi'a)*, <http://kadivar.com/?p=9449>.

<sup>25</sup> *Ibid.*

from moral and political viewpoints, the evolution of the Islamic ordinances on the women's attire provides evidence of the fact that they were deeply influenced by the same moral principles. It is presumed that caliphs started to seclude their wives from the eighth century. Under the Umayyads (periods of the fifth and sixth Imams) women's social status underwent noticeable modifications. This change occurred due to the operation of three interrelated factors:

1) Influences of foreign cultures and religions: The Umayyads adopted the foreign court ethic that authorised seclusion of women, veiling and construction of large harems<sup>26</sup>. The Umayyad queens who initially made significant contribution to the imperial power, with enlargement of the empire, lost their political relevance<sup>27</sup>. Muslims then assimilated many traditions of the conquered regions due to the increasing need for social control which had generated demand for adoption of new strategies<sup>28</sup>. To these measures were gradually attributed forms of prophetic traditions and chains of transmitters<sup>29</sup>. The harems, introduced by the Umayyads, thanks to the Abbasids, became established structures<sup>30</sup>. The latter succeeded in settling the image of enslaved, submissive and intimidated figures as paradigms of womanhood<sup>31</sup>.

2) Urbanization and its consequences: The politics of veiling is also a fruit of growing prosperity in the Islamdom when the rural and nomadic communities were replaced by state centred and stratified urban areas. This evolution brought about a more restrictive dress code for urban women. The dual ethic with regard to urban and rural women found its echo in a hadith of Imam Sadiq according to which looking at the hair of a rural woman is not considered a sin<sup>32</sup>. Regarding the *orf*, which determines the limits of *illa ma dhahara minha*, the author of one of the most important Shi'ite commentaries on the Koran, Moghadass Ardabili, maintained that women, especially poor ones, at the time of the revelation of the aforementioned verse of Nur, did not cover their neck, bosom, arms and legs<sup>33</sup>. Such a custom continued its echo also in the contemporary time, thus nomad and peasant women have never been subject to the restrictive dress code of the urbanized

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<sup>26</sup> See E. Anwar, "Harem", in R.C. Martin (ed.), *Encyclopedia of Islam and the Muslim World*, New York, Macmillan Reference, 2004, pp. 291-2.

<sup>27</sup> See the study of Nabia Abbott on the Umayyad queens. N. Abbott, "Women and the State in Early Islam", *Journal of Near Eastern Studies*, 1 (1942) 3, pp. 341-368.

<sup>28</sup> See N. R. Keddie, *Women in the Middle East. Past and Present*, Princeton and Oxford, Princeton University Press, 2007, p. 207 and R. Aluffi Beck-Peccoz, "Hijab", in M. Campanini (ed.), *op. cit.*, 141-3.

<sup>29</sup> When Muslims started to expand their territories, they adopted many traditions of the conquered people. Hence, many Byzantine, Arab, Persian, Jewish elements found their ways in the Islamic custom: female circumcision and stoning to death are some examples of these practices. See A. Barlas, *op. cit.*, pp. 64-5. N. R. Keddie, *op. cit.*, p. 31 and p. 207. Also R. Aluffi Beck-Peccoz, "Hijab", in M. Campanini (ed.), *op. cit.*, 141-3 and L. Ahmed, *Women and Gender in Islam. Historical Roots of a Modern Debate*, New Haven and London, Yale University Press, 1992, p. 68, pp. 80-3.

<sup>30</sup> See I. C. Schick, "Harem", in Suad Joseph (ed.), *Encyclopedia of Women and Islamic Cultures. Economics, Education, Mobility and Space*, 6 voll., Leiden and Boston, Brill, 2007, vol. IV, pp. 544-8.

<sup>31</sup> See F. Mernissi, *op. cit.*, p. 227.

<sup>32</sup> See M. Kadivar, *op. cit.*, and M. Khalafi, *op. cit.*, p. 123.

<sup>33</sup> See A. Qabel, *Ahkam-e Banovan dar Shariat-e Mohammadi*, published on [www.ghabel.net](http://www.ghabel.net), 2014, pp. 72-3.

families. Keddie has observed that rural women, among both Sunnis and Shi'ites, started to wear the veil only when they were forced to or their husbands tended to emulate the traditional bourgeoisie of towns<sup>34</sup>.

3) Decline in the women's status: The presence of slave women and gay courtesans in the Umayyad period and their loose morality gave birth to the idea of "protection" of free Arab women<sup>35</sup>. Moreover, slave women claimed fewer rights in terms of heritage that brought about a significant change in the freeborn women's social status<sup>36</sup>.

Aside from the debate on the change that took place in the Imams' social context, another important Kadivar's achievement consists in his courageous demonstration that even some commonly cited hadiths attributed to figures like Fatima, Amm Salma and the Prophet are *morsala*. Moreover, he contends that, despite the current norms of Iran, men are allowed to look at the hair of non-Muslim women and those who do not comply with the Islamic veil.

Without doubt, the clarification of the meaning of some koranic expressions like *illa ma dhahara minha* depends on the way in which *ijtihad* is practiced. Mujtahids are supposed to be aware of the *urf* of their society and the standards of its behaviour, but the determination of these norms in a country like Iran is anything but simple. As a criterion, Kadivar suggests that the attire of foreign actresses who are allowed to be broadcasted on the Iranian TV and cinema can mark the limits of modesty in the current Iran. If those women can surpass the government's censorship, a woman who has covered torso and legs but has left uncovered hair is deemed tolerable for the Iranian audience<sup>37</sup>.

Another Iranian mujtahid, who has published his innovative ideas about the veil was Ahmad Qabel (d. 2012). A collection of his articles, entitled *Ahkam-e Banovan dar Shariat-e Mohammadi* (Ordinances Regarding Women in the Muhammad's Sharia), written from 2004 to 2009 on various issues concerning women's rights was published in 2014. In this collection, one chapter is dedicated to the veil<sup>38</sup>. He maintains that covering the *awra* (shame) is the obligation of both men and women; however, the sense of *awra* is not clear because there is not an *ijma'* (consensus) among jurists on whether women are completely *awra* and if not which parts of their bodies can be

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<sup>34</sup> Keddie, *op. cit.*, p. 302.

<sup>35</sup> J. I. Smith, "Women, Religion and Social Change in Early Islam", in Y. Y. Haddad and E. B. Findly (ed.), *Women, Religion, and Social Change*, Albany, State University of New York, pp. 32-3. On the seclusion of aristocratic women, see N. Abbott, *op. cit.*, pp. 341-368.

<sup>36</sup> See I. C. Schick, *op. cit.*, pp. 544-8.

<sup>37</sup> This Kadivar's opinion on how to determine the limits of covering for the current Iran was expressed in 2007 in an interview published on his website. <http://kadivar.com/?p=2116> (last accessed 31/07/2017).

<sup>38</sup> See A. Qabel, *op. cit.*, pp. 53-108.

exposed in front of non-*mahrams*. According to Qabel there is no certain hadith that entails the necessity of covering of women's hair and neck. He observed that even an *akhbari* scholar<sup>39</sup> like Muhammad Baqir Majlesi had confirmed that among the most Shi'ite jurists there was no mention of the obligation of the veil<sup>40</sup>. After having examined various opinions on the issue, Qabel declared that the absence of a scholarly consensus has left the question open for discussion. Therefore, he invites jurists to adopt "dynamic *ijtihad*" with regard to this issue. Eventually, Qabel as a *mujtahid* declares his own fatwa: covering of women's hair is *mostahab* (recommended) and not *wajib* (necessary).

The other Iranian scholar who has analysed this question through the sacred texts is Moslem Khalafi (b. 1969). In the article entitled *Baz Negareshi Daroon Dini Be Hijab* (A Religious Revision of Hijab), Khalafi puts aside philosophical and rational discourses opting for an assessment of the question within the Islamic framework. With regard to the second source of *fiqh*, he provides a list of extremely permissive and extremely restrictive accounts about Hijab. Khalafi observes that some Shi'ite narratives are so restrictive that clearly legitimise the imprisonment of women while others are so permissive that even authorise women to pray without head cover and men to look at their faces with sexual intention<sup>41</sup>. After having examined the ideas of five Shi'ite jurists from the 10<sup>th</sup> to 17<sup>th</sup> centuries about the veil, Khalafi concludes that the hair that come below the shoulder, like nails, is not a part of the human body because it has no spirit. The reason that Khalafi provides for his claim is that in the ablution Muslims are supposed to wash their heads and not their hair<sup>42</sup>. He puts a very important question in the closing paragraphs of this essay that did not find any answer in his conclusion. Considering the existing contradictions in the Shi'ite Hadith on the modesty and women's attire, he asked the question of why only those hadiths that necessitate the veil have gained visibility; a question whose answer could create hindrance to the publication of the Khalafi's essay in Iran.

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<sup>39</sup> Akhbaris were those Shi'ite scholars who maintained that the Imams' Hadiths were sufficient for juridical exigencies of the Shi'ites and the introduction of *ijtihad* was an innovation of those *ulama* who were influenced by Sunnis. The literalist approach of these scholars towards Hadiths made them more loyal to these reports in their philosophical and juridical elaborations. See R. Gleave, "Akhbariyya", in R.C. Martin (ed.), *Encyclopedia of Islam and the Muslim World*, New York, Macmillan Reference, 2004, p. 34.

<sup>40</sup> See A. Qabel, *op. cit.*, p. 66.

<sup>41</sup> Usually the Iranian *faqih*s divide two types of *sitr* (covering). One of them is *sitr-e salati* (covering for prayer), while the other, *sitr az nazer*, entails the covering in front of non-*mahram* men. Khalafi argues that normally Shi'ite *faqih*s ordered a more restrictive covering for prayer than the veiling in front of non-*mahrams* because the observer of a prayer is supposed to be an omnipresent entity from which a woman can never hide herself. Consequently, legitimising women to pray without veil entails a much more permissive attire with regard to their presence in front of non-*mahrams*. M. Khalafi, *op. cit.*, pp. 90-1.

<sup>42</sup> Ivi, 80-1.

## The women's absence

In *Women's Identity and Rethinking the Hadith*, Barazangi maintains that various violations to women's rights, such as imposition of the veil, stemmed from the female absence in the process of the elaboration of the Islamic law. Such a problem emerged despite quite active role of the first generation of women in the transmission of the Hadith during the early post-prophetic period. As a result, the author exhorts women to participate in the re-examination of the content of the narratives affirming their capability in exegesis of the sacred texts.

Even though the presence of female transmitters in comparison to the male ones is much less noticeable both among Sunnis and Shi'ites, there is an important difference that should be taken into consideration. Differently from their Sunni counterparts, women sympathetic to the Ali's cause did not make great contribution to the Hadith collections. It has been said that Aisha alone built 15 percent of the Sharia through Hadith transmission<sup>43</sup> whereas Fatima bint Muhammad, despite her close relationship with the Prophet does not enjoy an outstanding appearance in the Shi'ite Hadith collections<sup>44</sup>.

The early second Islamic century witnessed the rise of professionalism in the realm of Hadith transmission. Collectors of the Hadith started their research outside the Umayyads' headquarters in Iraq and the Hijaz. Their eagerness to collect as many hadiths as possible led them to expand their travels to regions as far as Khorasan and Egypt. The inevitable need of travel for collection of Hadith was a requisite that women of that time could not satisfy, because they were not able to develop contact with non-Mahram men<sup>45</sup>. Among Shi'ites, in the pre-*qayba*<sup>46</sup> period women could not enjoy close ties with Imams that was the basic precondition for being a reliable transmitter of Hadith. Consequently, this task was quite always performed by Imams' close disciples<sup>47</sup>. As a result, women's contribution to the Shi'ite tradition is of a different nature compared to the Sunni world. The few women cited in the Shi'ite *rijal*<sup>48</sup> works have been considered worthy of mentioning

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<sup>43</sup> Aisha contributed up to 1400 traditions to the Hadith collections. See A. Sayeed, "Women in Imami Biographical Collections", in M. Cook, N. Haider, I. Rabb, A. Sayeed (ed.), *Law and Tradition in Classical Islamic Thought. Studies in Honor of Professor Hossein Modarressi*, New York, Macmillan, 2013, p. 87 and A. Barlas, *op. cit.*, pp. 45-6, H. Moghissi, *Women and Islam. Critical Concepts in Sociology*, 3 voll., London and New York, Routledge, vol. I. Images and Realities, p. 28.

<sup>44</sup> A. Sayeed, "Women in Imami Biographical Collections", p. 86 and H. Moghissi, *op. cit.*, p. 38.

<sup>45</sup> A. Sayeed, *Women and the Transmission of Religious Knowledge in Islam*, New York, Cambridge University Press, 2013., pp. 188-9.

<sup>46</sup> Among Twelver Shi'as it is believed that in 941 the last Imam went into *qayba* (occultation) during which any direct contact with him is impossible. This event marks the beginning of the era in which the Twelvers live in the absence of infallible Imams.

<sup>47</sup> A. Sayeed, "Women in Imami Biographical Collections", *op.cit.*, p. 86.

<sup>48</sup> *Im al-Rijal* is the study of the life of Hadith transmitters. These collections help readers to identify reliable narrators of Hadith based on their moral character. See *Oxford Dictionary of Islam*, John Esposito (ed.), New York, Oxford University Press, 2008, p. 135.

thanks to their legal discernment and skills in paraphrasing *rijal* volums (e.g. Hamida Rydashti). In the *rijal* collections these women have been called *alima* (knowledgeable) and *faqiha* (jurist) rather than *muhaditha* (transmitter of Hadith)<sup>49</sup>. It reveals two realities; the Shi'ite world, despite social obstacles, since the Middle Ages, had theoretic potentialities of growing female mujtahids, whilst these women did not receive the necessary acknowledgement for being Hadith reporters.

This observation poses some crucial questions: if women were eventually recognised knowledgeable enough to elaborate Islamic law from its sources, would they really use their capacity of *ijtihad* to formulate new laws in some highly sensitive issues like the Islamic veil? Can these women compensate for their absence from the world of the koranic hermeneutic<sup>50</sup> and the Hadith interpretation<sup>51</sup>?

In the contemporary Iran a few women joined the rank of mujtahid. It means that they were authorised by other mujtahids to practice independent reasoning in the field of Islamic law. Here I briefly examine the ideas of two of them who have enjoyed more visibility and fame than others. First of them, Sayyida Nusrat Beygum Amin (d. 1983), lived almost entirely in the pre-republican Iran and was a prominent scholar who possessed, inter alia, perfect knowledge of Hadith, *fiqh* and *usul* (principles of jurisprudence)<sup>52</sup>. She did not have the chance to witness the era of compulsory veiling and its consequences in Iran. This Iranian mujtahid was held in high regard by her male peers. When Amin was forty, Ayatollah Abd al-Karim Ha'iri Yazdi, Ayatollah Muhammad Shirazi, Ayatollah Estahbanati and Ayatollah Sheikh Muhammad Reza Abu al-Majd Najafi Isfahani granted her a certificate for practicing *ijtihad*. After having gained the permission of narrating Hadith from Ayatollah Abu al-Majid Najafi, she in turn granted it to other scholars such as Ayatollah Mar'ashi<sup>53</sup>.

Amin was not particularly concerned about women or gender related issues. The only book that she wrote on gender question is *Ravesh-e Khoshbakhti* (The Way of Achieving Happiness), in which, as a response to the ban of wearing the veil ordered by Reza Shah, she addressed her remarks to women who had abandoned their Islamic attire. In her discourse, such women would inflict an irreversible damage to society. Their act, in her view, was incompatible with Islam or even worse, it was a public declaration of enmity against this religion. A woman could not associate herself with Islam, Amin contended, if she rejected the use of head cover<sup>54</sup>. According to Amin,

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<sup>49</sup> Ivi, pp. 84-91.

<sup>50</sup> N. H. Barazangi, 2004, *op. cit.*, pp. 59-61.

<sup>51</sup> N. H. Barazangi, 2015, *op. cit.*

<sup>52</sup> T. Cherāghi, "Lady Nusrat Beygum Amin", *Message of Thaqaalayn*, 14 (2012) 3, p. 113.

<sup>53</sup> Ivi, p. 114

<sup>54</sup> Ivi, p. 119.

women suffer from some deficiencies by nature, one of them is that they want to be vain. Hijab, in her opinion, can adjust this imperfection<sup>55</sup>.

Zohreh Sefati (b. 1953) is the other officially recognised Iranian female mujtahid. Despite numerous difficulties and opposition of the clergy, she succeeded in following her Islamic studies in Qom. Sefati received her first permission of *riwayat* (transmission of Hadith) in 1996 and then was granted the permission of *ijtihad* as well. In 2013, she was appointed as juridical consultant of the vice president in Women and Family Affairs in Iran; an office that won her a great visibility given that since then all women and family related issues have been decided upon through consultations with her. In an interview with the International Koranic News Agency on the question of women's attire carried out in 2013, Sefati, who showed her complete awareness of the new debates on the interpretation of the sacred texts, recognised the fact that recently numerous scholars had casted doubt on the Koranic roots of the veil. Thus, she maintained that the koranic approach adopted by Motahari to discuss about the necessity of the veil, was not adequate anymore since the koranic verses that address the issue had been widely deconstructed and examined by mujtahids and secular authors both inside and outside Iran<sup>56</sup>. As a result, she suggests that new methods should be adopted to answer the recent critics of the Islamic veil who challenge its imposition through new interpretations of the Koran and Hadith. In a conference held in January 2014 in the female *hawza* of Mashhad, she underlines two crucial issues concerning this phenomenon: the most cited and discussed problems in the study of the Islamic veil, namely the meaning of *khomor* and the limits of the women's displayable adornments. She maintained that *khomor* (plural of *khimar*) mentioned in the verse 33:59, regards the covering of head and not bosom because *Khamr* (alcohol) is a drink that removes reason from the head, therefore *khomor* has to do with head and not with other parts of the body! It means that she has created a connection between two etymologically unrelated words to support the necessity of the veil. Regarding the aforementioned phrase of *illa ma dhahara minha*, she accepts that the criterion for determining the exposable *zina* is custom. However, according to Sefati, only the customs that do not contradict the reason and morality can be accepted as a source of law. It suggests that she has in mind a non-historical, fixed and static definition of morality to which customs should adapt themselves.

Zohre Sefati has so far made some lukewarm attempts to challenge the dominant vision on the ineligibility of women for *marj'aiyat*. Nevertheless, the question is: if finally the *hawza* authorities

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<sup>55</sup> See M. Künkler and R. Fazaeli, "The Life of Two Mujtahidahs. Female Religious Authority in Twentieth Century Iran" in M. Bano and H. Kalmbach, *Women, Leadership and Mosques. Changes in Contemporary Islamic Authority*, Leiden and Boston, Brill, 2012, p. 142.

<sup>56</sup> An interview of The International Koran News Agency with Zohreh Sefati, published on [www.iqna.ir](http://www.iqna.ir) on the 7<sup>th</sup> of September 2013.

reached a consensus to recognize the ability of women for *marj'aiyyat*, how much difference could a potential female Source of Emulation, raised in such a cultural system, make in the women's legal statues in Iran? How much "dynamic ijthad" can a woman, whose progress in the realm of ijthad depends on the men's approval, produce concerning women's rights in general and the question of head cover in particular<sup>57</sup>?

It is significant that among Iranians those who are eligible to exercise ijthad and have highlighted so far the irrelevance of the imposition of veiling to the sacred sources are all male mujtahids. Ayatollah Taleqani, Mohsen Kadivar, Ahmad Qabel, Seyed Muhammad Ali Ayazi are some of the Iranian mujtahids who have written about the obligatory hijab criticizing it in various manners, whereas the both two contemporary Iranian female mujtahids have adopted very conservative position in this regard<sup>58</sup>.

## Conclusion

Here I discussed about the question of the Islamic veil, or what erroneously has been called "hijab", within the Shi'ite tradition that forms the basis of the law in Iran. The prominence of the Koran compared to the other sources of *fiqh* is the principle that joins almost all schools of the Islamic law. However, this single norm takes on different aspects among various Islamic currents and schools of law<sup>59</sup>. In the canonical Shi'ite Hadith collections we have some reports that lay emphasis on the primacy of the Koran in formulation of Islamic ordinances and the fact that hadiths have to be corroborated through a confrontation with the Koran<sup>60</sup>. Nevertheless, in practice the hierarchical order between the Koran and the Hadith is usually overturned by mujtahids, whose intervention in

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<sup>57</sup> Two examples that concern other women's problems in Iran can clarify the position of the Iranian female mujtahids. The issue of illegibility of women for judgement is one of the prevalent debates on women's rights in Islam. Although Amin did not share the idea of inferiority of women to men, she believed that women could practice their juridical skills only among their *mahrims* because the proper place of a woman is her house. See M. Künkler and R. Fazaeli, *op. cit.*, p. 143. The other example of the conformism of the female mujtahids is the position of Sefati regarding the age of marriage. The age of marriage in 2002 was set 13 years old for girls, which reflects the Sefati's opinion on this matter. See M. Badi'i, "Goftegu ba Faqih Pajuhandeh Banu Zohereh Sefati" (In Dialog with Zuhre Sefati), *Keyhan-e Farhanghi*, 199 (1382/2004), pp. 12-3. See also M. Künkler and R. Fazaeli, *op. cit.*, p. 157.

<sup>58</sup> The dependency of the Iranian feminists on men is highlighted also by Roja Fazaeli. After having examined the content of Zanan magazine from 1992 until its closure in 2008, Fazaeli concluded that those jurists who had given more relevance to the egalitarian aspects of the sacred texts were all men. See R. Fazaeli, "Contemporary Iranian Feminism: Definitions, Narratives, and Identity", in C. Raghavan and J. P. Levine, *Self-determination and Women's Rights in Muslim Societies*, 2012, p. 276.

<sup>59</sup> See A. Pakatchi, "Gherayesh-haye Fiqh-e Imamiyye Dar Sade Dovom va Sevom Hijri Qamari" (Currents of the Imamiyya Jurisprudence in the Second and Third Islamic Centuries), *Namiyye Farhanghistan-e Olum*, 4 (1375), p. 19.

<sup>60</sup> According to a Hadith of the first Shi'ite Imam, mischief and tumults derive from ordinances that do not have koranic roots. See M. Kolayni, *op. cit.*, *fadl al-Ilm* (Book on Virtue of Knowledge), chapter of *al-Rai wal Maqaiss* (Innovation, Personal Opinions and Analogies), p. 69. In the *Osul al-Kafi* it is reported that the Prophet ordered people to accept only those Hadiths that correspond to the Koran. Ivi, p. 88.

countries that are governed by the Islamic law, like Iran, has created various problems with regard to the modern notion of human rights. The importance of the Hadith for the elaboration of the Islamic ordinances stems from two main particularities of the Koran. First, the holy book has an ambivalent language that sometimes results in completely contrary interpretations. Second, it maintains silence in numerous important questions concerning Muslims' social life. The four canonical Shi'ite Hadith collections, with regard to the women's issues, naturally reveal the impacts of the social context of the fourth/tenth century. Although the authors of these collections came from isolated centres of north eastern Iran, all of them accomplished a part or whole of their intellectual path in the Abbasids' capital i.e. Baghdad. Some recent studies discuss about the dynamicity and rational inclination of the School of Baghdad in the interpretation of Hadith, compared to the schools of Qom and Ray<sup>61</sup>. This openness to the employment of *ra'y* (opinion) and *qiyas* (analogy) prepares a better milieu for a modification of the Koranic ethics through the assimilation of the customs of the time. The androcentric view and the specific definition of womanhood (associated with notions like slave and object for sexual use), fashioned under the Abbasids<sup>62</sup>, at that time overshadowed the previous vision on women as participants of battle fields and present in the religious ceremonies<sup>63</sup>. Such a perception of women indirectly conditioned the Shi'ite tradition as well. The era and social context in which the canonical Shi'ite Hadith collections were compiled was an unpropitious moment for women when they had already lost the privileges of their sisters of the proto-Islamic communities.

The revival of the *usulism* in the 18<sup>th</sup> century raised hope for rationalism in the Shi'ite jurisprudence, however, the orthodox approach to the second source of law hinders the way of critical readings of these traditions. Nevertheless, some contemporary Iranian mujtahids have so far revealed the potentialities of dynamic *ijtihad* that can offer new interpretations of the sacred texts.

It is imagined that if women had been given the chance of playing a more significant role in transmission of Hadith and if they had made bigger contributions to the formation of the Islamic law, violence to their rights – such as compulsory veiling – would not have taken place. In this article, we saw the position of the two contemporary Iranian women who have joined the rank of mujtahid. If the sacred texts that address the question of women's attire are deconstructed and the imposition of head cover has been criticised by Iranian male mujtahids, these women, instead, have taken a very conservative positions so far. Their attitude towards this question evince the fact that in

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<sup>61</sup> M. R. Jabbari, "Negahi be Makateb-e Hadithi Shi'ite da Sade haei Avvaliye" (A Glance at the Shi'ite Hadith Schools in the First Centuries), *Shi'ite Shenasi*, 3-4 (1382/2004), pp. 59-80.

<sup>62</sup> See L. Ahmed, *op. cit.*, p. 67.

<sup>63</sup> Ivi, pp. 69-70.

the current Iran the quality of the so-called dynamic *ijtihad* depends on the way in which jurists succeed in receiving acknowledgement of their peers and not their gender.

The women's eligibility for *ijtihad* has never been fully recognised or desired by the clergy. Before the Islamic revolution, male mujtahids were against the women's seminary education and were not willing to teach women<sup>64</sup>. In 1993-94, almost a decade after the foundation of the Iran's largest female *hawza*, called Jamai'at al-Zahra, at the Khamenei's behest, the curriculum of the female *hawza* underwent a significant change. The lesson of *kharej*, which is the final and indispensable step towards *ijtihad*, was eliminated from Jamai'at al-Zahra's curriculum. This issue pushed female mujtahids to non-juridical activities like *tabliq* (propagation)<sup>65</sup>. Therefore, in Iran women's eligibility for both rational elaboration of ordinances and exercise of *ijtihad* has been completely left to the clergy's discretion.

It becomes clear, thus, why Iranian female mujtahids, not only in the case of women's issues – e.g. the veil – but also regarding those questions that challenge women's rational abilities – e.g. ineligibility of women for judgment, for the Majlis Khobregan (Assembly of Experts) and for *marj'aiyyat* – comply with the clergy's authority. Whereas, more pro-women fatwas have been so far issued by male mujtahids.

It is known that the majority of the Islamic ordinances have not been formulated on the basis of the Koran, but through a conciliation of the Koran with the customs of time by means of hadiths that sometimes contradict the Holy book<sup>66</sup>. Considering those Shi'ite reports that place emphasis upon the priority of the Koran over the Hadith, on the one hand, and the elasticity of the Shi'ite *ijtihad*, on the other, we have a wide range of possibilities among Shi'ites to review laws that directly affect women's social lives like veiling. The Iranian female mujtahids, however, can harness these possibilities only if they receive independence and freedom in the elaboration of law. The formation of laws that clash with the women's modern rights occurred in the period of the central Imams of the Twelver Shi'ites or, according to Kadivar, from the first half of the second Islamic century, when women could not have any voice in law making. With regard to the Shi'ite world, the absence of women, cannot be merely compensated by their presence in the field of law making but through a different process of joining the rank of mujtahid.

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<sup>64</sup> See M. Badi'i, *op. cit.*, p. 8

<sup>65</sup> Ivi, p. 18.

<sup>66</sup> A. Barlas, *op. cit.*, p. 44.