

## **Shiite Tradition and the Iranian Mujtahids' Reflections on the Question of the Islamic Veil**

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

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. Other works scrutinise the role of the Sunni Hadiths in definition of the limits of modesty. This article is concentrated on Iran and the Shiite tradition. First, I discuss about the importance of the Hadiths and the role that they play 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, we have some complexities in the Shiite Hadiths 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 Shiite Hadith contents through the eyes 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 with this regard 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 absence of women in the 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 been frequently 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 cloths 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 Koran in that fundamental terms that address the issue are not clear in the koranic lexicon of the two aforementioned verses. With regard to the Islamic veil, the poetic and ambivalent language of the Koran does not allow us to answer to some basic questions; e.g., what is intended for *zina* (ornament, refinery)? What is the extra-linguistic correspondence of *illa ma zahara minha* (except what [ordinarily] appears thereof) in the verse 24:31? If the Koran has mentioned *juyub* (bosom) as the only organ that has to be covered, does it imply that proto-Muslim women would cover their heirs, 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

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

<sup>2</sup> The term *hijab* has been cited seven times in the Koran with different meanings (7.46, 17.45, 19.17, 33. 53, 38. 32, 41.5, 42.51) but none of them corresponds to its contemporary connotation. Regarding the koranic references to the issue, see for example F. Mernissi, *Donne del profeta. La condizione femminile nell'Islam*, Genova, ECIG, 1992, pp. 109-112, S. Amer, *What is veiling*, Chapel Hill, University of North Carolina Press, 2014, p. 23, G. Anwar and L. McKay, "Veiling", in R.C. Martin (ed.), *Encyclopedia of Islam and the Muslim World*, New York, Macmillan Reference, 2004, pp. 721-2, R. Aluffi Beck-Peccoz, "Hijab", in M. Campanini (ed.), *Dizionario dell'Islam*, pp. 141-3.

<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 Shias, 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 heirs that had already existed. The confusing question, however, is that if there are some studies that show that at the time of the Prophet there was not enough cloth to cover the whole body how can 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

women) mentioned among *mahrims* 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 have been asked to wear veil to be distinguished from slave women, with the egalitarian spirit of Islam? Is it a permission of sexual abuse of non-Muslim women? 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>4</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 such persons would justify this harassment maintaining that the Prophet's women were not discernible from non-Muslim women, this verse aimed at protecting the Prophet's honour<sup>5</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 societies?

When we consider 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 Hadiths. The expression *illa ma zahara 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 Hadiths are 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 Shiite world, found its restrictive version only thanks to Hadiths, thus many years after the Prophet<sup>6</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 Hadiths to socio-political issues or criticising its application requires greater knowledge in order to be able

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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> Moslem Khalafi discusses about the use of "L" before *yadrabonna* 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.

<sup>5</sup> See F. Mernissi, *op.cit.*, pp. 218-9.

<sup>6</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.

to distinguish authentic from spurious narrations. One needs long training in medieval Arabic, knowledge of chains of narrators and terminology to single out reliable Hadiths. Even among the most cited Hadiths, only an expert can identify *daif* (weak) and *morsala* (unauthentic) narrations<sup>7</sup>.

Some authors have highlighted the problems that emerge with regard to this question in the Sunni narrations. 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 overturned due to the men's attempts aimed at submitting women. Hadiths were employed to prove that head cover was necessary for the observation of the principle of modesty<sup>8</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>9</sup>. However, the sacralisation of the Hadith and the fact that medieval Muslim scholars, e.g. al-Shafei and al-Ghazali, authorized the abrogation of the Koran by the Hadith<sup>10</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 death of the Prophet, but they were not completed earlier than the third Islamic century<sup>11</sup>. Ali Engineer has observed that the question of the Islamic veil addressed in the Koran corresponds to the situation of tribal women of the proto-Islamic period<sup>12</sup> but then thousands of spurious Hadiths were forged to satisfy the emerging exigencies of later periods<sup>13</sup>. In her examination of the six canonical Sunni Hadith collections, Linda Clarke has noted that among thousands of reports there is 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

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<sup>7</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>8</sup> N.H. Barazangi, p. vii and p. 11.

<sup>9</sup> Ivi, pp. 6-10.

<sup>10</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 Amozhay-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>11</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>12</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>13</sup> Ivi, pp. 110-120 and A. Barlas, *op.cit.*, p. 42.

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>14</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 Shiite school had to wait the arrival of the Abbasids. More interested in the sophisticated elaboration of the juridical matters than the territorial expansion (like their predecessors); the Abbasids' period is known also as the era of *ijtihad*<sup>15</sup>. The technical language of the Islamic law saw its development under the Abbasid caliphate when methodology became as important as content in the field of jurisprudence<sup>16</sup>. Nonetheless, when these schools were fashioned women had been already reduced to sexual objects and prisoners of harams<sup>17</sup>. By the time the Abbasids transferred their capital to Baghdad, women had disappeared from public sphere<sup>18</sup>.

### **Shiite Tradition and Contemporary Iranian Scholars**

With regard to the Shiite Hadiths we have major difficulties the most important one is of the historical nature. It has been said that Shias 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 Shiite Hadith is the one collected by Muhammad ibn Ya'qub Kolayni (d. 941) *al-Kāfi fi '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 Shiite scholars who discussed about the problem of the validity of Hadith in his *Oddat al-oṣul* and the methodology of certifying their validity<sup>19</sup>.

Aside from the authenticity of reports, regarding the Shiite Hadiths we face epistemological problems as well. In the Twelver Shiite tradition, Imams are considered “speaking Koran” since

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<sup>14</sup> L. Clarke, *op.cit.*, p. 220.

<sup>15</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>16</sup> A. Black, *The History of Islamic Political Thought. From the Prophet to the Present*, Edinburgh University Press, 2001, p. 33.

<sup>17</sup> Z. Mir Hosseini, *op. cit.*, p. 193.

<sup>18</sup> R. Aluffi Beck-Peccoz, “Hijab”, in M. Campanini (ed.), *op. cit.*, pp. 141-3.

<sup>19</sup> A. K. Mussavi, “Hadith ii. In Shi'ism”, *Encyclopaedia Iranica*, 11 (2012) 4, pp. 447-8.

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 seven different spheres of meaning, only sinless imams can grasp all of its dimensions<sup>20</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 the God’s proofs (*hujaj*), Gods’ doors (*abwab*), Gods’ tongue (*lisan*), Gods’ face (*wajh*), Gods’ eye (*ayn*) and God’s names (*asma*)<sup>21</sup>. Different stances on 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 and seventh imams) are considered not 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 affected also the contemporary Shiite fundamentalists’ discourses according to which the infallible imams enjoyed the same mind even though their praxis, in response to their contexts, demonstrated variations<sup>22</sup>.

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

In a study on the Islamic veil, Mohsen Kadivar 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 Hadiths, the Shiite jurists’ opinions about women’s attire and the Shiite Hadiths. What I report here concerns only his argument about the Shiite Hadiths. Kadivar has noticed that there is a quantitative difference in the hadiths of Baqir, Sadiq, Kazim and Ridha on this issue compared to those of the Prophet and Ali. It means that the most Hadiths that have come down to us from the Shiite Imams on this topic can be

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<sup>20</sup> M. Ayoub, “The Speaking Qur’an and the Silent Qur’an. A Study of the Principles and Development of Imami Shi’i Tafsir”, in A. Rippin (ed.), *Approaches to the History of the Interpretation of the Qur’an*, Oxford: Clarendon Press, 1988, pp. 179-187.

<sup>21</sup> M. Kolayni, *Osul al-Kafi*, 4 voll., Tehran, Daftar-e Nashr Farhang Ahl-e Beyt, (1348/1970), v. I, p. 270 ss. In the *Osul al-Kafi* 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.

<sup>22</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.

traced back from 94 to 203<sup>23</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 Hadiths with regard to the Islamic veil testifies a change in the women's social status. Kadivar presupposes that the women's clothing only in the second Islamic century has gained its restrictive form<sup>24</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 Hadiths of those four Shiite 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 Shiite thought, Imams represent the antipodes of rulers of their times criticising them 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 (period of Baqir and partly Sadiq) women's social status underwent noticeable modifications. This change was due to 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>25</sup>. The Umayyad queens who initially made significant contribution to the imperial power, with enlargement of the empire, lost their political relevance<sup>26</sup>. Muslims then assimilated many traditions of the conquered regions because the increasing need for social control generated demand for adoption of new strategies<sup>27</sup>. To these measures were gradually attributed forms of prophetic traditions and chains of transmitters were forged<sup>28</sup>. The Harems, introduced by the Umayyads, thanks to the Abbasids,

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<sup>23</sup> See M. Kadivar, *Ta'moli Dar Massa'leye Hijab 2 (Hijab Dar Rivayat-e Shi'a)*, <http://kadivar.com/?p=9449>.

<sup>24</sup> *Ibid.*

<sup>25</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>26</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>27</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>28</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 costume: 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.

became established structures<sup>29</sup>. The latter succeeded in settling the image of enslaved, submissive and intimidated figures as paradigms of womanhood<sup>30</sup>.

2) Urbanization and its consequences: The politic of veiling is a fruit of growing prosperity in the Islamdom when the rural and nomadic communities gave way to 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 heirs of a rural woman is not considered a sin<sup>31</sup>. Regarding the *orf*, which determines the limits of *illa ma zahara minha*, the author of one of the major Shiite Koran commentaries, Moghadass Ardabili, maintained that women, especially poor ones, at the time of the revelation of the aforementioned verse of Nur, did not use to cover their neck, bosom, arms and legs<sup>32</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 families. Keddie has observed that rural women, among both Sunnis and Shias, started to wear veil only when they were forced to or their husbands tended to emulate the traditional bourgeoisie of towns<sup>33</sup>.

3) Decline in 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>34</sup>. Moreover, they claimed less right in terms of heritage that brought about a significant change in the freeborn women's social status<sup>35</sup>.

Aside from the debate on the change that took place in the Imams' social context, another important Kadivar's achievement consist in his courage in demonstrating 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 heirs 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 zahara minha* depends on the way in which *ijtihad* is practiced. Mujtahids are supposed to be aware of the *orf* of their societies and the standards of behaviour, but the determination of these norms in a

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<sup>29</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>30</sup> See F. Mernissi, *op. cit.*, p. 227.

<sup>31</sup> See M. Kadivar, *op. cit.*, and M. Khalafi, *op. cit.*, p. 123.

<sup>32</sup> See A. Qabel, *Ahkam-e Banovan dar Shariat-e Mohammadi*, published on [www.ghabel.net](http://www.ghabel.net), 2014, pp. 72-3.

<sup>33</sup> Keddie, *op. cit.*, p. 302.

<sup>34</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>35</sup> See I. C. Schick, *op. cit.*, pp. 544-8.

country like Iran is anything but simple. As a criterion, Kadivar suggests that the attire of foreign actresses who are allowed to be broadcasted in the Iranian TV and cinema can mark the limits of modesty in the current Iran. If those women can surpass the government's censorship it means that, a woman who has covered torso and legs but has left uncovered hairs is deemed tolerable for the Iranian audience.

Another Iranian mujtahid, who has published his innovative ideas about the Islamic veil was Ahmad Qabel. 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, a chapter is dedicated to the Islamic veil<sup>36</sup>. He maintains that covering the *awra* (shame) is demanded both from men and women; however, the sense of *awra* is not clear because there is not a *ijma'* (consensus) among *fuqaha* on whether women are completely *awra* and if not which parts of their bodies can be exposed in front of non-*mahrams*. According to Qabel there is no certain Hadith that entails the necessity of covering of women's heirs and neck. He observed that even an *akhbari* scholar<sup>37</sup> like Muhammad Baqir Majlesi had confirmed that among the most Shiite jurists there was no mention of the obligation of veil<sup>38</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 heirs for women is *mostahab* (recommended) and not *wajib* (necessary).

The other Iranian scholar who has analysed this question through the sacred texts is Moslem Khalafi. In an 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 from within the Islamic framework. With regard to the second source of *fiqh*, he provides a list of extremely permissive and extremely restrictive narrations about Hijab. Khalafi observes that some Shiite Hadiths are so restrictive that clearly legitimise the imprisonment of women while others are so permissive that authorise women even to pray without veil and men to look at the face of beautiful women even with sexual intention<sup>39</sup>. After having examined the ideas of five Shiite

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<sup>36</sup> See A. Qabel, *op. cit.*, pp. 53-108.

<sup>37</sup> Akhbaris were those Shiite scholars who maintained that the Imams' Hadiths were sufficient for juridical exigencies of the Shias 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>38</sup> See A. Qabel, *op. cit.*, p. 66.

<sup>39</sup> Usually the Iranian *fuqaha* 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 Shiite *fuqaha* ordered a more restrictive covering for prayer than the veiling in front of non-*mahrams* because the observer of a prayer

jurists from the 10<sup>th</sup> to 17<sup>th</sup> centuries about the Islamic veil, Khalafi concludes that those hairs that come below the shoulder, like nails, are not parts of the human body because they do not have spirit. The reason that Khalafi provides for his claim is that in the ablution Muslims are supposed to wash their heads and not their hairs<sup>40</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 Shiite Hadiths on the modesty and women's attire, he posed the question of why only those Hadiths that necessitate the Islamic veil have gained greater visibility compared to others; a question whose answer could create hindrance to the publication of the Khalafi's essay in Iran.

### **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 veil, stemmed from the absence of women in the elaboration of the Islamic law. Such a problem emerged despite the quiet active role of the first generation of women in the transmission of the Hadiths during the early post-prophetic period. As a result, the author exhorts women to participate in the re-examination of the content of the Hadiths affirming their capability in exegesis of the sacred texts.

It is clear that we have a much less noticeable presence of female transmitters than men both among Sunnis and Shias, however, an important difference in this presence should be taken into consideration. Differently from their Sunni counterparts, women sympathetic to the Ali's cause did not make great contribution to the Hadith collections. It has been said that Aisha alone built 15 percent of the Sharia through Hadith transmission<sup>41</sup> whereas Fatima bint Muhammad, despite her close relationship with the Prophet does not enjoy an outstanding appearance in the Shiite Hadith collections<sup>42</sup>.

The early second Islamic century witnessed the rise of professionalism in the realm of Hadith transmission. Collectors of the Hadith started their researches outside the Umayyads' headquarters in Iraq and the Hijaz. Their eagerness to collect as many Hadiths as possible led them to expand

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is supposed to be an omnipresent entity therefore 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-*mahr*ams. M. Khalafi, *op. cit.*, pp. 90-1.

<sup>40</sup> Ivi, 80-1.

<sup>41</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>42</sup> A. Sayeed, "Women in Imami Biographical Collections", p. 86 and H. Moghissi, *op. cit.*, p. 38.

their travels to regions far as Khorasan and Egypt. The inevitable need of travel for collection of Hadith was a requisite that women of that time could not satisfy, because women were not able to develop contact with non-Mahram men<sup>43</sup>. Among Shias, in the pre-Qayba period women could not enjoy close relationship with Imams that was the basic precondition of being a reliable transmitter of Hadith. Consequently, this task was performed quiet always by Imams' close disciples<sup>44</sup>. As a result, women's contribution to the Shiite tradition is of a different nature compared to the Sunni world. The few women cited in the Shiite *rijal* works have been considered worthy of mentioning thanks to their legal discernment and skills in paraphrasing *rijal* works (e.g. Hamida Rydashti). In the *rijal* collections these women have been called *alima* (knowledgeable) and *faqih*a (jurist) rather than *muhaditha* (transmitter of Hadith)<sup>45</sup>. It reveals two realities; the Shiite world, despite social obstacles, since the Middle Ages, had theoretic potentialities of growing female mujtahids, however, these women did not receive acknowledgement of being Hadith reporters.

This observation brings a question to mind: when women are eventually recognised knowledgeable enough to elaborate Islamic law from its sources, do 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>46</sup> and the Hadith interpretation<sup>47</sup>?

In the contemporary Iran there have been two women who joined the rank of *mujtahida*. It means that they were authorised by other mujtahids to practice independent reasoning in the field of Islamic law. Sayyida Nusrat Beygum Amin, who lived almost entirely in the pre-republican Iran, was a prominent scholar who possessed, inter alia, perfect knowledge of Hadith, *fiqh* and *usul* (principles of jurisprudence)<sup>48</sup>. Died in 1983, Amin did not live enough to experience the era of the obligatory veil and its consequences in Iran. Amin was held in highest regard by her male peers. When she was forty Ayatollah Abd al-Karim Ha'iri Yazdi, Ayatollah Muhammad Shirazi, Ayatollah Estahbanati and Ayatollah Sheikh Muhammad Reza Abu al-Majd Najafi Isfahani granted her the authority to practice *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>49</sup>.

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<sup>43</sup> A. Sayeed, *Women and the Transmission of Religious Knowledge in Islam*, New York, Cambridge University Press, 2013., pp. 188-9.

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

<sup>45</sup> Ivi, pp. 84-91.

<sup>46</sup> N. H. Barazangi, 2004, *op. cit.*, pp. 59-61.

<sup>47</sup> N. H. Barazangi, 2015, *op. cit.*

<sup>48</sup> T. Cherāghi, "Lady Nusrat Beygum Amin", *Message of Thaqaalayn*, 14 (2012) 3, p. 113.

<sup>49</sup> Ivi, p. 114

Amin was not particularly concerned about women or gender related issues. The only book that she wrote on gender questions is *Ravesh-e Khoshbakhti* (The Way of Achieving Happiness), where, in reaction to the ban of wearing veil ordered by Reza Shah, she addressed her remarks to women who had left their Islamic attire. In her discourse, women who abandon their veil inflict an irreversible damage to society. Their act, in the Amin's view, was incompatible with Islam or even worth, it was a public declaration of enmity against Islam. A woman cannot associate herself with Islam, Amin contended, if she does not opt for Islamic veil<sup>50</sup>. According to Amin, 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>51</sup>.

Zohreh Sefati is the other officially recognised Iranian *mujtahida*. Despite numerous difficulties and opposition of the clergy, she succeeded in following her Islamic studies in Qom. Sefati received her first permission of *riwayat* in 1996 and then was granted the permission of *ijtihad* as well. In 2013, she was appointed as juridical consultant of the vice president in Women and Family Affairs; an office that won her a great visibility given that since then all women and family related issues have been decided upon through consultations with her. In an interview with the International Koranic News Agency on the question of women's attire carried out in 2013, Sefati, who showed her complete awareness of the recent debates on the interpretation of the sacred texts, recognised the fact that recently numerous scholars have casted doubt on the Koranic roots of the Islamic veil. Thus, she maintained that the koranic approach adopted by Motahari to discuss about the necessity of veil, is not adequate anymore for the koranic verses that address the issue have been widely deconstructed and examined by mujtahid and secular authors both inside and outside of Iran<sup>52</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 the Hadith. In a conference held in January 2014 in the female hawza of Mashhad, she underlined two crucial issues concerning this phenomenon: the most cited and discussed problems in the study of the 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 drinking that remove reason from the head, therefore *khomor* has to do with head and not other parts of the body! It means that she has created a connection between two etymologically unrelated words to support the necessity of veil.

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<sup>50</sup> Ivi, p. 119.

<sup>51</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>52</sup> An interview of The International Koran News Agency with Zohreh Sefati, published on [www.igqa.ir](http://www.igqa.ir) on the 7<sup>th</sup> of September 2013.

Regarding the aforementioned phrase of *illa ma zahara minha*, she accepts that the criterion for determining the exposable *zina* is custom. However, according to Sefati, only those customs can be accepted as a source of law that do not contradict the reason and morality. It suggests that she has in mind a non-historic, fixed and static definition of morality to which customs should adopt themselves.

Zohre Sefati has so far made some lukewarm attempts to challenge the dominant vision on the ineligibility of women for *marjaiya*. Nevertheless, the question is that if finally the hawza authorities reach a consensus to recognize the ability of women for *marjaiyya*, how much a potential female Source of Emulation, raised in such a cultural system, could make difference in the women's legal statues in Iran? How much a woman whose progress in the realm of *ijtihad* depends on the men's approval can produce dynamic *ijtihad* with regard to the women's rights in general and the question of veil in particular<sup>53</sup>?

It is significant that among Iranians those who are eligible to exercise *ijtihad* and have highlighted so far the irrelevance of the imposition of veil 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 veil criticizing it in various manners. Whereas the both two contemporary Iranian *mujtahidas* have adopted very conservative positions in this regard<sup>54</sup>.

## Conclusion

Here I discussed about the question of the Islamic veil, or what erroneously has been called Hijab, within the Shiite tradition that forms the basis of the law in Iran. There is a principle that joins almost all schools of the Islamic law namely the prominence of the Koran compared to the other sources of *fiqh*. However, this single norm takes on different aspects among various Islamic

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<sup>53</sup> Two examples that concern other women's problems in Iran can clarify the position of the Iranian *mujtahidas*. 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 *mahrms* 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 women mujtahids is the position of Sefati regarding the age of marriage. The age of marriage in 2002 was set 13 years old for girls, which reflects the Sefati's opinion on this matter. See M. Badi'i, "Goftegu ba Faqih Pajuhandeh Banu Zohreh Sefati" (In Dialog with Zuhre Sefati), *Keyhan-e Farhanghi*, 199 (1382/2004), pp. 12-3. See also M. Künkler and R. Fazaeli, *op. cit.*, p. 157.

<sup>54</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.

currents and schools of law<sup>55</sup>. In the canonical Shiite 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>56</sup>. Nevertheless, in practice the hierarchical order between the Koran and the Hadith is usually overturned by mujtahids, whose intervention in 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 Shiite 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 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>57</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 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>58</sup>, then overshadowed the previous vision on women as participants of battle fields and present in the religious ceremonies<sup>59</sup>. Such a perception of women indirectly conditioned the Shiite tradition as well. The era and social context in which the canonical Shiite 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 Ususlism in the 18<sup>th</sup> century raised hope of rationalism in the Shiite 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.

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<sup>55</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>56</sup> According to a Hadith of the first Shiite Imam, mischief and tumults drive 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 Maqaiiss* (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.

<sup>57</sup> M. R. Jabbari, "Negahi be Makateb-e Hadithi Shiite da Sade haei Avvaliye" (A Glance at the Shiite Hadith Schools in the First Centuries), *Shiite Shenasi*, 3-4 (1382/2004), pp. 59-80.

<sup>58</sup> See L. Ahmed, *op. cit.*, p. 67.

<sup>59</sup> Ivi, pp. 69-70.

It is imagined that if women had been given the chance of playing a more significant role in transmission of Hadiths and if they had made bigger contributions to the formation of the Islamic law, violence to their rights – such as the imposition of veil – 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 veil has been criticised by Iranian male mujtahids, these women, instead, have so far taken a very conservative positions. Their attitudes towards the question evince the fact that in the current Iran the quality of the so-called dynamic *ijtihad* depends on the way a jurist succeeds in receiving acknowledgement of his/her peers and not their sexual identity.

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>60</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 the curriculum of *Jamai'at al-Zahra* pushing female mujtahids to non-judicial activities like *tabliq* (propagation)<sup>61</sup>. Therefore, in Iran women's eligibility for rational elaboration of ordinances and exercise of *ijtihad* has been completely left to the clergy's discretion.

It becomes clear, thus, why Iranian women mujtahids, not only in the case of women's issues – e.g. veil – but also regarding those questions that challenge women's rational abilities – e.g. ineligibility of women for judgment, for the Assembly of Experts (*Majlis Khobregan*) and for *Marjaiyya* – 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 contradicting the Holy book<sup>62</sup>. Considering those Shiite reports that place emphasise upon the priority of the Koran over the Hadith, on the one hand, and the elasticity of the Shiite *ijtihad*, on the other, we have a wide range of possibilities among Shias 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

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<sup>60</sup> See M. Badi'i, *op. cit.*, p. 8

<sup>61</sup> Ivi, p. 18.

<sup>62</sup> A. Barlas, *op. cit.*, p. 44.

the Twelver Shias, 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 Shiite world, the absence of women, can be compensated not merely by their presence in the course of law making but through a different process of joining the rank of mujtahid.