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The American University in Cairo
School of Global Affairs and Public Policy

**THE REGULATION OF INTERFAITH MARRIAGES
IN ISLAMIC LEGAL DISCOURSE**

A Thesis Submitted to the

Department of Law

**in partial fulfillment of the requirements for
the LL.M. Degree in International and Comparative Law**

By

Leena Salah Fadel Azzam

June 2015

The American University in Cairo
School of Global Affairs and Public Policy

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A Thesis Submitted by

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June 2015

in partial fulfillment of the requirements for the L.L.M. Degree in
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DEDICATION

To my parents Howida Taha and Salah Azzam who raised me, supported me, taught me, and loved me. To me, you are an enormous source of strength.

To the greatest sister a person can have, Lara Azzam, who always motivated and assisted me throughout the thesis writing period.

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THE REGULATION OF INTERFAITH MARRIAGES
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Leena Salah Fadl Azzam

Supervised by Professor Gianluca Parolin

ABSTRACT

This thesis examines the reasons behind the consensus on the prohibition of interfaith marriage (IFM) between Muslim women and Scriptural men in Islam (Scripturaries or *Ahl al-kitāb* are people belonging to a religion in which a scripture was revealed as the Torah or Bible). The thesis argues that the consensus behind that prohibition is fundamentally determined by (1) the gendered understanding of the construction of *qiwwāmah* and (2) the perception of the religious other in Islamic tradition. I argue that these conceptualizations of woman and the religious other in Islamic tradition result in a hierarchical marital relationship that intersects in interfaith marriage regulations between husband and wife and Muslim and Scriptural. First, I construct this argument by examining the three verses governing interfaith marriage regulations in the Qur'an. The three verses are variably read by Islamic legal scholars given that there is no definite textual evidence on whether an interfaith marriage between a Muslim woman and a Scriptural man is prohibited. Islamic legal scholars also resort to other forms of clarification to verify their position. Consequently, I examine how the consensus regarding the prohibition was built by providing a conceptual analysis of its two determinant factors.

In marriage, the legal postulate of *qiwwāmah* is understood to sanction the husband's authority over his wife. Marriage is also articulated as constituting an element of enslavement (*riqq*) for the wife in Islamic legal discourse. I argue that nature and scope of *Qiwwāmah* in marriage changes and shifts in meaning in *tafsīr* literature. With this also comes the tradition's position marking the permanent socio-religious superiority of the Muslim community over all others. This position I argue overlooks the Qur'an's varying and distinctive usage of concepts such as: believer (*mu'min*), Muslim, polytheist (*mushrik*), unbeliever (*kāfir*), and the identification of People of the Book (*Ahl al-Kitāb*). This thesis examines the discourse on these concepts in authoritative Qur'anic commentaries and Islamic legal discourse. Finally, I present early reformists, neo-traditionalists, and feminists' perceptions and reading of these concepts, arguing that these readings can lead to an inquiry on how IFM regulations can be re-articulated in Islamic legal discourse.

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I. Introduction:

A. Qur'anic textual sources governing Interfaith Marriage (IFM) Regulations: Not enough?

This thesis puts under scrutiny the broad modern Islamic legal rule that a Muslim woman is formally forbidden to marry a non-Muslim man regardless of his religion, while a Muslim man is allowed to get married to a non-Muslim woman, provided she is a Christian or a Jew.¹ This is done through examining the conceptualization of gender relationships in marriage and the religious other in classical Islamic legal discourse and Qur'anic commentaries. As it developed, Islamic law established divergent legal rules for Muslims' interfaith marriages with numerous categories of unbelievers. Although the Arabic sources of Islamic legal discourse and authoritative Qur'anic commentaries extensively deal with the subject, systematic studies of the factors on which interfaith marriage regulations in Islamic tradition are constructed remain insufficient. The issue of interfaith marriages for Muslims is addressed in three verses of the Qur'an: Q. 2:221, Q. 60:10, and Q. 5:5.

Q. 2:221 seems to have revealed in the early Medinese period.² Q. 2:221 prohibits marriage of Muslim men and women alike to *mushrikīn* (*mushrikāt* for women), a term

¹For a critique of the abstraction of the modern rule and the limits it creates for the possibility of legal change see Gianluca P. Parolin, *Interfaith Marriages and Muslim Communities in Scotland: A Hybrid Legal Solution?*, 3 E.J. ISLAMIC MIDDLE EASTERN LAW 84-94 (2015).

²Q. 2:221 date is not exactly known. In his formative-period tafsīr of Q. 2:221, Muqātil ibn Sulaymān cites in detail the occasion of the revelation of the verse (*sabab al-nuzūl*): Marthad bin Abi Marthad Al-Ghanawī --a man who used to take the prisoners from Mecca to Medinah—He arranged with a man to bring him to Medinah. There was a woman from Quraysh in Mecca named 'Anāq, and she was his friend. She came out then and met him, and said: 'Who is this? Marthad? Welcome, O Marthad, come tonight and stay at our place.'" He said: 'O 'Anāq, the Messenger of Allah has forbidden adultery.'" She said: 'O people of the tents, this porcupine is the one who is taking your prisoners from Mecca to Medinah!' Marthad then hid between the trees. The unbelievers of Mecca came after him but Allah caused them not to see him. He then went to the prisoner and took him out of Mecca and undid his fetters. He then went to the Prophet and said: 'O Messenger of Allah, shall I marry 'Anāq?' He remained silent and did not answer him, then the following was revealed: Do not marry unbelieving women (idolaters), until they believe: a slave woman who believes is better than an unbelieving woman, even though she allure you.'" MUQĀTIL IBN SULAYMĀN, 1 TAFSĪR MUQĀTIL IBN SULAYMĀN 190 (Dar 'Ihyā' al turāth 2002).

that literally refers to polytheists or idol worshippers who associate others in belief with God:

Do not marry unbelieving women (idolaters) [*mushrikāt*], until they believe: a slave woman who believes is better than an unbelieving woman, even though she allure you. Nor marry (your girls) to unbelievers [*mushrikīn*] until they believe: a man slave who believes is better than an unbeliever, even though he allure you. Unbelievers do (but) beckon you to the Fire. But Allah beckons by His Grace to the Garden (of Bliss) and forgiveness, and makes His Signs clear to mankind: that they may celebrate His praise.³

Nevertheless, the term's exact definition and the types of unbelieving men and women it encompasses in the prohibition has been a controversial matter in both Qur'anic commentaries (*tafsīr*) and Islamic juristic discourse (*fiqh*).

The prohibition of interfaith marriages between Muslims and unbelievers is also stated in Q. 60:10. This verse however, uses the term *kawāfir* rather than *mushrikāt*:

O you who believe! When there come to you believing women refugees, examine (and test) them: Allah knows best as to their Faith: if you ascertain that they are Believers, then do not send them back to the Unbelievers. They are not lawful (wives) for the Unbelievers, nor are the (Unbelievers) lawful (husbands), for them. But pay the Unbelievers what they have spent (on their dower). And there will be no blame on you if you marry them on payment of their dower to them. But do not hold to the guardianship of unbelieving women: ask for what you have spent on their dowers, and let the (Unbelievers) ask for what they have spent (on the dowers of women who come over to you). Such is the command of Allah: He judges (with justice) between you. And Allah is full of Knowledge and Wisdom.⁴

In his hadith collection, al-Bukhārī recites the occasion of revelation of the verse which was revealed after the Hudaibiyyah treaty in 628 A.D.⁵ The treaty was agreed upon since the Prophet wanted to perform pilgrimage ('*Umrah*) in Mecca, but the powerful merchant tribe of *Quraysh* declined his entry.⁶ The treaty allowed Muhammad entry into Mecca on the condition that there would be a ten-year period of truce between both parties.⁷ When Suhail bin 'Amr agreed to the treaty, one of the things he stipulated then, was that the Prophet should return to the pagans anyone coming to him from their side, even if he was

³Quran 2:221, translated in 'Abdullah Yusuf Ali, *The Qur'an: translation* (Tahrike Tarsile Qur'an Inc. 2003), available at

http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_2_the_heifer/0.

⁴Quran 60:10, translated in *id.* available at

http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_60_the_woman_to_be_examined/0.

⁵MUḤAMMAD IBN ISMĀ'ĪL BUKHĀRĪ, SAḤĪḤ AL-BUKHĀRĪ Volume 3, Book 50, No. 874 (Peace Vision 1971).

⁶MUḤAMMAD IBN JARĪR AL-ṬABARĪ, 23TAFSĪR AL-ṬABARĪ: JĀMI' AL-BAYĀN 'AN TA'WĪL AL-QUR'ĀN 328 (Mu'asat al-Risālah 1999).

⁷*Id.*

a Muslim.⁸ The Prophet agreed to that condition and returned Abū Jandal to his father Suhail bin 'Amr. Thenceforward the Prophet returned everyone in that period (of truce) even if he was a Muslim.⁹ On the other hand, those who left from Medinah to Mecca were not obliged to be returned. According to a Prophetic tradition cited in Tabarī's *tafsīr*, those who left Medinah have chosen disbelief over belief and consequently were of no use to Muslims.¹⁰ The revealed text however made an exception regarding women. During that period some believing women emigrants came to Allah's Apostle, amongst these, was Um Kulthūm bint 'Uqba 'ibn Abū Mu'ayt who was a young lady then. Her relative came to the Prophet and asked him to return her, but the Prophet did not return her to them for Allah had revealed Q. 60:10 regarding women.¹¹ If women came to join Muslims, then they should be tested for their faith. If it was seen that they truly wanted to embrace Islam and join Muslims, then they would not return and would not become lawful to the *kufār* (though the Qur'an does not use the equivalent of terms such as non-Muslim or unbeliever, yet these are the most common English renderings of the term *kufār* (sing. *Kāfir*) both in translation and usage).¹²

Finally, the third verse on IFM, Q. 5:5, made it permissible for Muslim men to marry from the virtuous and/or free (*al Muhsanāt*) Scriptural women i.e. Christians and Jews (*Ahl al-kitāb*):¹³

This day (all) good and pure things are made lawful to you. The food of the People of the Book is lawful to you and yours is lawful to them. (Lawful to you in marriage) are (not only) chaste women who are believers, but chaste women among the People of the Book, revealed before your time, - when you give them their due dowers, and desire chastity, not lewdness, nor secret intrigues. If anyone rejects faith, fruitless is his work, and in the Hereafter he will be in the ranks of those who have lost (all spiritual good).¹⁴

⁸BUKHĀRĪ, *supra* note 5.

⁹*Id.*

¹⁰AL-TĀBARĪ, *supra* note 6.

¹¹BUKHĀRĪ, *supra* note 5.

¹²AL-TĀBARĪ, *supra* note 6, at 329-30.

¹³For more on *Ahl al-kitāb* see Ahmad Pakatchi & Jawad Qasemi. *Ahl al-kitāb, Encyclopaedia Islamica. Brill Online* (2008), available at http://www.brillonline.nl.library.aucegypt.edu:2048/entries/encyclopaedia-islamica/ahl-al-kitab-COM_0200.

¹⁴Quran 5:5, translated in 'Abdullah Yusuf Ali, *supra* note 2, available at http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_5_the_table_spread/0.

Al-Tabarī mentions that some interpreters read the verse 5:5 as abrogating the already established prohibition of interfaith marriages of Muslim men to Scriptural women (*Kitābiyyāt*) by Q. 2:221 which states “Do not marry unbelieving women.”¹⁵ Other interpreters who similarly believed that Q. 2:221 encompassed both Polytheists and Scripturaries, suggested instead that it was Q. 2:221 that abrogated by Q. 5:5 disregarding the traditional chronology of the Qur’an. Abrogation (*Naskh*) was arbitrarily used by the *fuqahā’* and *mufasssirūn* to reason and produce different outcomes on whether IFM marriages are permissible or not for Muslims.¹⁶ Al-Tabarī mentions and supports a third position, based on interpreting the word ‘unbelieving women’ in Q. 2:221 as encompassing only the unbelieving idol worshippers of Arabia.¹⁷ To the proponents of this third position, even though verse 2:221 connotes a general statement regarding all unbelievers, its interpretation only encompasses a specific category of unbelievers (*hiya ‘āyah ‘āmmun zāhiruhā wa khāssun ta’wīluha*).¹⁸ In other words, it excludes *Ahl al-kitāb*. The Qur’anic text, thus, does not expressly forbid or permit an interfaith marriage between Muslim women and Scriptural (*Kitābī*) men.

However, proponents of this third view still held that interfaith marriage between Muslim women and *Kitābī* men is prohibited. This was based upon a combination of factors: 1) An analogy of the marriage between *Ahl al-kitāb* and Muslims with the prohibited marriage between idol worshippers (*mushrikīn*) and Muslims in the verse 2:221 based on the common *ratio legis* revealed in 2:221: “Unbelievers do (but) beckon you to the Fire,” 2) narratives from the Prophetic tradition to support the prohibition of such marriages, and 3) the consensus of all the jurists (*fuqahā’*) on its prohibition.

¹⁵MUHAMMAD IBN JARĪR AL-TABARĪ, 4 TAFSĪR AL-TABARĪ: JĀMI‘ AL-BAYĀN ‘AN TA’WĪL AL-QUR’ĀN365 (Mu’asast al-Risālah 1999).

¹⁶MUHAMMAD IBN AL-HASAN AL-TŪSĪ, 3 AL-ISTIBSĀR FI-MĀIKHTALAFĀ MINA AL-AKHBĀR 178-9 (Dār al-Kutub al-Islāmīyah 1956). The Shi‘ite scholar Al-TŪsĪ also cites another tradition which states that Q. 5:5 has been abrogated by Q. 60:10. Al-Rawānīdī, a Mu‘tazilite scholar and critic of religion who later adhered to Shiism, adds that Q. 5:5 was rather sanctioning marriage to chaste women among *Ahl al-kitāb* who have converted to Islam. He cites a tradition in support of the view that Q. 5:5 was abrogated by Q. 2:221 and Q. 60:10. On the other hand, the Hanbali jurist Al-Jawzī cites a view according to which Q. 60:10 was abrogated by Q. 5:5 ‘ALĪ BIN MUHAMMAD AL-JAWZĪ, 2 NĀSIKH AL-QUR’ĀN WA –MANSŪKHU 606 (‘Imadat al-Baḥth al-‘Ilmlī bi Al-Jami‘ah al-Islamiyyah2003). Cf. MUHAMMAD IBN ‘ABDALLĀH IBN AL-‘ARABĪ, AL-NĀSIKH WA-AL-MANSŪKH FĪ AL-QUR’ĀN AL-KARĪM214 (Maktabat al-Thaqāfah al-Dīnīyah 1992).

¹⁷AL-TABARĪ, *supra* note 6.

¹⁸*Id.* at 366.

In the first case, some jurists and authors of Qur’anic commentaries see an analogy between idol worshippers and *Ahl al-kitāb* stating that both “beckon you [Muslims] to the Fire;” they read the textual-based evidence of the permissibility of an interfaith marriage between a Muslim man and a *Kitābiyyah* in verse 5:5 as echoing male authority in marriage. Its specificity and its initial stipulation that “This day (all) good and pure things are made lawful to you” led to the jurists’ logical deduction that what was not mentioned in the verse 5:5 was thus unlawful. This deduction helped crystallize the jurists’ understanding of the institution of marriage and spousal rights and obligations. To the majority of jurists in classical Islamic legal discourse, Muslim woman’s supremacy by virtue of being Muslim would come in direct contradiction with her acquiescent status as a wife in the family model construed by jurists from Islamic law sources.¹⁹ As for the jurists’ consensus (*‘ijmā’*) on the impermissibility of an interfaith marriage between a Muslim woman and a *Kitābī* man, it constitutes a legitimate source of law that is irrevocable according to the principles of Islamic law laid down by classical Muslim jurists; *‘ijmā’* nonetheless acquires this status from textual evidence according to classical Muslim jurists.²⁰ In this thesis, I argue that the jurists’ consensus on prohibiting interfaith marriage between Muslim women and *Kitābī* men stems from a reading of the above three verses in light of two conceptualizations. These conceptualizations are: a) *qiwwāmah* as the *mufassirūn* derived and understood it from Q. 4:34 and b) the non-believer. In the first case, verse 4:34 constitutes the textual basis on which the entire Islamic model of the family has been shaped. The doctrine of *qiwwāmah* as derived from the verse Q. 4:34 sanctions the husband’s authority and regulation of his wife’s mobility, sexuality, and behavior. This authority, according to major works in the *tafsīr* literature, stems from divine preferential designations to males (thus, the religious duty of the wife

¹⁹See, e.g., ABŪ BAKR IBN MAS‘ŪD KAṢĀNĪ, BADA’I’ AL-ṢANA’I’ FĪ TARTĪB AL-SHARA’I’ (Dar al-Kutub al-‘ilmiyya 1986). See also ABĪ MANSŪR MUḤAMMAD IBN MUḤAMMAD AL-MĀTURĪDĪ, TA’WĪLĀT AHL AL-SUNNAH (Dar al-kutub al-‘ilmiyya 2005).

²⁰*‘ijmā’* is a derivative source of Islamic law and can be defined as “agreement of the community as represented by its *mujtahidūn* living in a particular age or generation, an agreement that bestows on those rulings or opinions [based on probable textual knowledge] subject to it conclusive, certain knowledge.” Consensus thus rendered probable textual evidence certain regardless of its nature, how it occurs though is still a question. Yet in practice, it is identified by looking at past works of *mujtahidūn* and observing that they all agreed on the same solution to a particular matter. WAEL HALLAQ, SHARI’A: THEORY, PRACTICE, AND TRANSFORMATIONS 98-100, 116-9 (Cambridge University Press 2009).

to obey her husband), and results in enslavement (*riqq*) as constituting an element of marriage (*al-nikāh*) in this hierarchical relationship.

In the second case, given the situation in 7th century Arabia and the Qur'an's aim to affirm monotheism (*tawhīd*) as a legacy of pre-Muhammadan revelation, the Qur'an makes a clear distinction between *Ahl al-kitāb* and *mushrikīn*. Nevertheless, textual evidence shows that the Qur'an simultaneously accuses *Ahl al-kitāb* of *shirk*. Then, I argue that the consensus on the prohibition of interfaith unions between Muslim women and Scriptural (*Kitābī*) men cannot be understood without examining the role and position of a woman in "Islamic" marital relations and the non-believer/religious other. The consensus is by and large constructed by making an analogy of an interfaith marriage between a Muslim woman and a *Kitābī* man to a *Kitābī* master owning a Muslim slave. I argue that the differences and variations in meaning and scope of marital rights and responsibilities in an Islamic marriage and the conceptualization of a non-believer can channel Islamic legal discourse in more than one direction with regards to interfaith marriages between Muslim women and *Kitābī* men. That is to say that the permissibility or prohibition of interfaith marriage is to a certain extent dependent upon the generational, geographical and political consensus on the division of marital rights and responsibilities. If views and perceptions of male dominance are not prevalent in oral and practiced culture in society then the prohibition of interfaith marriage in such a case is questionable.

In their endeavor to construct a normative concept of an ideal Muslim woman, classical Muslim jurists and interpreters based their perception of female and male sexuality on the indispensable difference between the two. They perceive males "as having an insatiable sexual desire aroused by sight, smell, or voice of a woman, thereby distracting and diverting their energy from productive endeavors to wasteful sexual activity."²¹ Females on the other hand were relegated to the "irreligious realm of sexual passion," in contrast to the "illuminated sphere of male (religious) knowledge, which is the sole source of

²¹LAMIA RUSTUM SHEHADEH, *THE IDEA OF WOMEN IN FUNDAMENTALIST ISLAM* 218 (University Press of Florida 2003).

religious authority.”²² Fatema Mernissi also argues that Muslim sexuality is territorial: “strict space boundaries divide Muslim society into two sub-universes: the universe of men (the *’umma* (nation), the world, religion and power) and the universe of women, the domestic world of sexuality and the family.”²³ Women are seen as lacking intelligence but gifted with an ability to defeat men by cunningness and attraction that can undermine a man’s will and reduce him to a passive role.²⁴ From here, it becomes necessary to regulate the active and aggressive female sexual instinct with precautionary safeguards to preserve social order and not cause *fitnah*.²⁵ Linked to this is the attribution of a certain role and status to the wife and husband in Muslim traditional thought, the strict gender-differentiated marital rights and obligations. This contributes thus to the creation of an authoritarian marital relationship primarily founded on male epistemic privilege through the doctrine of *qiwwāmah*. The understanding of marriage in classical Islamic jurisprudence is also largely affected by the institutions of patriarchy, social stratification, and slavery.²⁶ Neo-traditionalist movements whose prominent ideologues are Abū al-‘Alā’ al-Mawdudī, Hasan Al-Bannā, Sayyid Qutb, Zaynab al-Ghazālī, and Rāshid al-Gannūchī also operate within the classical understanding of male and female sexuality despite their individual peculiarities

For the purposes of this thesis, I am concerned primarily with the normative text of Qur’anic commentaries and Muslim jurists’ legal discourse on *qiwwāmah* and the non-believer. I argue that interfaith marriage regulations in classical Islamic tradition have been construed in light of the scholars’ understanding of and approach towards two concepts: *qiwwāmah* and *mushrik*, *kāfir*, *Ahl al-kitāb*. I aim to argue that the jurists’ perception of martial life as a form of enslavement (*riqq*) continues to exist today as a

²²ADIS DUDERIJA, CONSTRUCTING A RELIGIOUSLY IDEAL BELIEVER AND WOMAN IN ISLAM 101 (Palgrave Macmillan 2011).

²³FATEMA MERNISSI, BEYOND THE VEIL: MALE-FEMALE DYNAMICS IN MUSLIM SOCIETY 191-8 (Saqi 2011).

²⁴Ebrahim Moosa, *Transitions in the ‘Progress’ of Civilization* in VOICES OF ISLAM (Omid Safi ed., Oneworld 2003).

²⁵MERNISSI, *supra* note 23, at 50.

²⁶See KECIA ALI, MARRIAGE AND SLAVERY IN EARLY ISLAM 65-97 (Harvard University Press 2010). LEILA AHMED, WOMEN AND GENDER IN ISLAM 79-102 (American University in Cairo Press 1993). See also Adis Duderija, *A Case Study of Patriarchy and Slavery: The Hermeneutical Importance of Qur’ānic Assumptions in the Development of a Values-Based and Purposeful Oriented Qur’ān-sunna Hermeneutic*, 11 HAWWA 58-87 (2013).

result of the concept of male authority (*qiwwāmah*); this perception of marriage (*nikāh*) constitutes the basic premise upon which the rule on interfaith marriages has been articulated in Islamic legal discourse. This does not mean that in Islamic legal discourse a wife is a slave, but rather that slavery allows for understanding one of the central notions that has shaped the jurists' views of marriage which is that licit sexual relations are hierarchical. It was only the male husband/owner who had sexual dominion over the female wife/slave. Although the jurists' doctrine of marriage as analogous to slavery does not bluntly govern Muslims today, it continues to be visible and influential. I aim in this thesis to unpack interpretations of the Qur'anic text and Islamic tradition that construct the prohibition of interfaith marriages between Muslim women and *Kitābī* men. These interpretations constitute an important part of Islamic law in the legal systems of many Muslim nation-states today that also have constitutions guaranteeing formal equality and liberty as their sources of law.

B. Methodology:

I intend to examine the diversity in normative text of the juristic tradition and Qur'anic commentaries on the doctrine of *qiwwāmah*. Following this, I will demonstrate how this understanding of the institution of marriage is clearly reflected in the arguments building the consensus against an interfaith marriage between a Muslim woman and a *Kitābī* man. This understanding of such interfaith marriages continues to have an impact.

The first chapter of this thesis is divided in two sections: *tafsīr* and Islamic jurisprudence. In the first section I examine the history of the *tafsīr* tradition. The aim of this is to contextualize the shifts in meaning that occur in interpreting the doctrine of *qiwwāmah* in *tafsīr* literature discussed in the following part of this section.

The second section of this chapter looks at the evolution of Islamic jurisprudence (*fiqh*) in order to gain a better understanding of how classical Muslim jurists read, interpreted, and deduced legal rules from the textual sources. Then, I examine how marriage was perceived as enslavement (*riqq*) in *fiqh* discourse. This is followed by an examination of

riqq regulation in *fiqh* discourse and the impact of its conceptualization and practice on the status of the wife in the institution of marriage. The next two part of this section then look at: 1) how marriage as enslavement is manifested in IFM regulations in *fiqh* discourse and 2) the variable conceptualizations of the religious other (in this case the *Kitābī*) constructed to instill the prohibition. For this chapter, I am using primary source material: classical Qur’anic commentaries (*tafsīr*), traditional biographical accounts of the Prophet Muhammad (*sīrah*), and formative and post-formative period jurists’ legal texts (*fiqh*). These sources are also modes of argument characteristic to legal texts leading jurists to different conclusions than those in other works.²⁷ Some of these approached questions of marriage and gender quite differently, even though both were “steeped in the same scriptural and cultural milieu.”²⁸

The second chapter of this thesis examines interpretations and arguments put forth on the doctrine of *qiwwāmah* and the prohibition of interfaith marriage between Muslim women and *Kitābī* men by significant figures from the early reformist period and the neo-traditionalist movement. In particular, I look at Muhammad ‘Abduh’s *tafsīr*. ‘Abduh is one of the pioneer ideologues of the early reformist period though by no means a representative of all the individual approaches and peculiarities of the entire era. From the neo-traditionalist period, I look in detail at Sayyid Qutb’s *tafsīr*. In this chapter, I also focus on contemporary works of progressive Muslim scholars who include but are not limited to: ‘Amīnah Wadud, ‘Azīzah Al-Hibrī, Sa‘diyya Shaikh, Nasr Hāmid Abū Zayd, and ‘Asmā’ Barlas. I survey progressive Muslim thinkers’ interpretive strategies and interpretations of Qur’anic text and analysis of concepts that appear in the Qur’an such as *qawwāmūn*, *shirk*, *kufr*, and *Ahl al-kitāb*. Though these scholars undertook Qur’anic interpretation, their works unlike the former reformists, did not include a systematic survey of all the Qur’anic verses.

My methodology also attempts to raise analytical and theoretical considerations of the terms “Believer” and “Muslim woman.” As Miriam Cooke argues “the neologism

²⁷See the material on marriage in the two *‘adab* texts in Nadia Maria El Cheikh, *In Search for the Ideal Spouse*, 45 J. ECON. SOC. HIST. ORIENT 179-196 (2002).

²⁸ALI, *supra* note 26, at 25.

Muslimwoman draws attention to the emergence of a new singular religious identity and gendered identification that overlays national, ethnic, cultural, historical, and even philosophical diversity.”²⁹ These feminist scholars have embarked upon the task of subverting this “Muslimwoman” singular identity by developing alternative interpretations rooted in egalitarian terms. Their work also serves to highlight the patriarchal nature of much of the Islamic tradition, particularly when it comes to authoritative Qur’anic commentaries (*tafsīr*) and Islamic jurisprudence (*fiqh*). This thesis thus aims to examine the normative concept of Muslimwoman in reference to the textual indicants (*dalīl*) found in the authoritative Qur’anic commentaries and classical Sunni jurisprudence. The purpose of this study is to highlight what Khaled Abou El-Fadl terms as the “inherent ambiguity” present in textual sources; this results from adopting a balanced approach towards the Qur’an where neither the author’s intent, language, or the reader have the upper hand in determining its meaning. This approach is also present in Farid Esack’s work where he aims to re-examine how the concepts of believer (self) and non-believer (other) are demarcated in the Qur’an to allow for more space for the righteous and just other.³⁰ He utilizes this approach to examine how the Qur’anic terms *Islam*, *kufr*, *Ahl al-kitāb*, *mushrikīn*, and *wilāyah* can be re-defined. His work also looks at modern and pre-modern Muslim theologian views on these terms arguing that “Islamic conservatism has persistently narrowed the theological base for defining *’imān*, *’islām* and widened the base for *kufr*.”³¹ The purpose thus of examining both the concepts of “Muslimwoman” and believer is to show how the meaning of the textual indicants was produced concerning interfaith marriage between Muslims and *Ahl al-kitāb* and their governing in Qur’anic commentaries and Islamic legal discourse. In surveying the various readings and scope of the concept of *qiwwāmah* and that of the unbeliever, this thesis aims to show the dynamism in approaching and deriving meaning in interpretation of textual sources. This dynamism in producing meaning of both concepts from textual sources is reflected in the issue of interfaith marriage of a Muslim with an unbeliever *Kitābī* (other).

²⁹Miriam Cooke, *Deploying the Muslim Woman*, 24 JOURNAL OF FEMINIST STUDIES IN RELIGION 91 (2008).

³⁰FARID ESACK, QUR’AN, LIBERATION & PLURALISM: AN ISLAMIC PERSPECTIVE OF INTERRELIGIOUS SOLIDARITY AGAINST OPPRESSION 14 (Oneworld 1997).

³¹*Id.* at 13.

II. *Qiwwāmah*, *Shirk*, *Kufr*, and *Ahl al-kitāb* in IFM Regulations: A Classical Approach:

It can be argued that the classical Muslim jurists' consensus on prohibiting interfaith marriages between a Muslim woman and a *Kitābī* man is to a large extent a result of a patriarchal understanding of marriage. Since the jurists' perception of male dominance over a female in the marital relationship entailed that such dominance cannot be allowed for a *Kitābī* man over a Muslim woman, consensus was reached on prohibition. To illustrate how their understanding of marriage shaped the consensus of classical Muslim *fuqahā'* on prohibiting these interfaith marriages, it becomes important to examine the construction of *qiwwāmah* and *riqq/slavery* in classical Muslim legal thought. This is because the postulate of *qiwwāmah* has been constructed in the Qur'anic commentaries (herein after *tafsīr*) to signify the absolute authority given to the Muslim husband by God over his wife. For some authors in *tafsīr* literature, *qiwwāmah* signified the systematic reference to female servitude and male power over all women.³²

A. *Tafsīr*:

The first part of this section looks at the history of the Islamic tradition of *tafsīr*. It presents the context in which the understanding of the concept of *qiwwāmah* has developed and evolved. In this part, I briefly examine the *tafsīr* tradition which recognizes certain standards and conventions over the course of Islamic history that mark the sound interpretation of a Qur'anic verse from the inaccurate one. This investigation is necessary to better understand the nature and methodological approaches of the authoritative *tafsīr* works in the discussion that follows. This brief survey of the *tafsīr* tradition also puts into context Muslim feminists and reformists' readings of the *qiwwāmah* verse Q. 4:34 as contributions to *tafsīr* literature. These readings will be discussed in the next chapter.

³²See MUḤAMMAD AL-SHĪRĀZĪ AL-BAYDĀWĪ, ANWĀR AL-TANZĪL WA-ASRĀR AL-TA'WĪL (Dār 'ihyā' al turāth al 'arābī 1997). MUḤAMMAD IBN AḤMAD QURṬUBĪ, TAFSĪR AL-QURṬUBĪ: AL-JĀMI' LI-AḤKĀM AL-QUR'ĀN (Dār al-kutub al misriyya 1964). MUḤAMMAD 'ABDUH, TAFSĪR AL-MANĀR (Dār al-Manār 1935).

The second part of this section presents traditional *mufassirūn* formulations and discourse relating to *qiwwāmah*. In the examined formative and post-formative period *tafsīr* literature, the *mufassirūn* (plural for *mufassir*) interpreted the term “*qawwāmūn*” as the natural predisposition of man to hold authority over women. These *mufassirūn*, the work of which I discuss in detail in this chapter, perceive the husband to be his wife’s superior, and the one responsible of morally directing her. In some of the *tafsīr* literature, superiority of husband over wife is justified by a series of skills and doctrinal standards that result in the production of a divine preference of men over women even beyond their role as husbands. By and large, the verse Q. 4:34 known as the *qiwwāmah* verse is interpreted in the *tafsīr* literature as a command to husbands to exercise authority over their wives by virtue of what God has preferentially designated them with, both morally and materially as a men. This understanding of the concept of *qiwwāmah* has endorsed a requirement of the wife to obey her husband (*tā’ah*).

Some of the *mufassirūn* go further and associate the wife with a slave or prisoner (*‘āniyah*); by marriage the woman is under, and subject to, the absolute authority of her husband.³³ In recognition of this masculine authority, the husband is expected to maintain his wife and family. The gendered legal production of *qiwwāmah* and *tā’ah* has led to a reading of the Qur’anic verses and Prophetic tradition on interfaith marriages between Muslims and *Ahl al-kitāb* that make it impossible for a Muslim woman to marry a *Kitābī*. By looking at such concepts and their consequences on the marital relationship and contract, I argue that the contextual understandings of such concepts were at the root of the consensus reached on the prohibition of interfaith marriage between a Muslim woman and a *Kitābī* man. The second part of this section thus traces the “discursive stages” through which the concept of *qiwwāmah* was assembled and evolved from Q. 4:34 in

³³This conceptualization of marriage is attributed to the Prophet himself and is based on a number of Prophetic traditions which include: “Marriage is enslavement; let one, therefore, be careful in whose hands he places his daughter.” “Show fear of God in your relations with women, for they suffer in your homes.” AHMAD IBN ‘ABD AL-ḤALĪM IBN TAYMĪYAH, 32 MAJMŪ‘ FATĀWA 28 (Mujama‘ al-Malik Fahd 1995)

tafsīr literature from the pre-modern period and up till the eighteenth century as “an independent and separate (trans-contextual) patriarchal construct.”³⁴

1. History of the Islamic Tradition of *Tafsīr*

The works of *tafsīr* can be divided into three historical phases. The first phase was that of the Prophet Muhammad and his companions. The Prophet was considered to be the first commentator on the Qur’an. His commentaries were transmitted to and amplified by those of his companions among which was the prominent ‘Abdallah Ibn ‘Abbas. The second phase marks the transmission of these interpretations to the disciples and followers (*al-ṭabi‘īn*). Lastly, the third phase begins with the formal documentation and development of the science of interpretation (*‘ilm al-tafsīr*).

The word *tafsīr* is used only once in the Qur’an whereas *ta’wīl* is mentioned seventeen times.³⁵ The word *ta’wīl* connotes explanation or interpretation. It seems that both words *tafsīr* and *ta’wīl* were used synonymously without differentiation in meaning (*ma‘na*) in the early history of *tafsīr*. They were technical terms within the works of Qur’anic commentaries, used specifically during the first three Islamic centuries.³⁶ Later however, both *tafsīr* and *ta’wīl* came to be distinguished from each other. The latter was seen as “the product of research and investigation, the former dependent upon transmission from Muhammad and his companions... *ta’wīl* became limited to interpretation which leaves the obvious (*zāhir*) sense and delves into more speculative language (*bātin*).”³⁷

Methods of interpretation have been mainly divided to interpretation according to recorded traditions (*tafsīr bi ‘al-ma‘thūr*) and interpretation in accordance with

³⁴Omaima Abou-Bakr, *The Interpretive Legacy of Qiwwāmah as an Exegetical Construct* in MEN IN CHARGE: RETHINKING AUTHORITY IN MUSLIM LEGAL TRADITION (Ziba Mir Hosseini et al.eds, Oneworld Publications 2015).

³⁵I. Poonawala, *Ta’wīl*. *Encyclopaedia of Islam, Second Edition*. Brill Online (2012), available at http://www.brillonline.nl.library.aucegypt.edu:2048/entries/encyclopaedia-of-islam-2/ta-wi-l-SIM_7457.

³⁶*Id.* See for examples al-Tabarī and al-Māturīdī who use the term *ta’wīl* in the titles of their *tafsīr*. MUHAMMAD IBN JARĪR AL-TABARĪ, *TAFSIR AL-TABARĪ: JĀMI‘ AL-BAYĀN FĪ TA’WĪL AL-QUR’ĀN* (Mu‘asast al-Risālah 1999). ABĪ MANSŪR MUHAMMAD IBN MUHAMMAD AL-MĀTURĪDĪ, *TA’WĪLĀT AHL AL-SUNNAH* (Dar al-kutub al ‘ilmiyya 2005).

³⁷Andrew Rippin, *Tafsīr*. *Encyclopaedia of Islam, Second Edition*. Brill Online (2012), available at http://www.brillonline.nl.library.aucegypt.edu:2048/entries/encyclopaedia-of-islam-2/tafsi-r-SIM_7294.

considered opinion (*tafsīr bi 'al-ra'y*).³⁸ This classical separation has come to divide the Muslim community on “the authority of community (*ma'thūr*) versus the authority of intellect (*ra'y*).”³⁹ This classification, however, cannot be independently used to assess Qur'anic commentaries and categorize them into one group or the other for “different *mufasssīrūn* have different concerns and goals, and this is reflected in the relative weight they put upon elements such as history, grammar, semantics, law, theology, or folklore.”⁴⁰ Emphasis on grammar was seen in works for example which included Al-Zajjāj's (d.311/923) *tafsīr Ma'ānī 'l-Ḳur'ān wa i'rābuhu*, while work of al-Qurtubī (d.676/1272), *Ahkām al-Qur'an*. They worked within a framework of legal analysis and used out of necessity grammatical and historical elements to make a case for his legal points. Among the other tools used for interpretation was the narratives offered through Prophetic history the function of which was to “prove the fact of revelation and to embody an interpretation that would relate the text to a context.”⁴¹ Symbol, allegory, and inspiration developed in *tafsīr* within the context of Sufism.⁴²

Four periods distinguished how the literature of *tafsīr* developed: formative, classical, mature, and contemporary. The formative period included *tafsīr bil riwāyah* (interpretation through oral transmission), before it gained authority with the emergence of the hadith science. Written works most likely did not appear until the early eighth century. The commentaries in this early phase until the early ninth century were not yet characterized by a uniform character. They mainly included paraphrasing of Qur'anic verses and clarifying narratives about the verses based on *isra'iliyat*, Jewish and Christian texts and reports. The formative period texts of *tafsīr* also included discussions of legalistic verses.⁴³ The classical period marks the emergence of the epitome of traditional *tafsīr*, comprehensive and hadith-based, al-Tabarī's *tafsīr* and the significant “yet subtle

³⁸Additional classifications include: symbolic Sufi interpretation (*bil ramz*), thematic approach (*mawdu'ī*), literary analysis (*bayanī*), and scientific interpretation (*'ilmī*), see MUHAMMAD HUSAYN AL-DHAHABI, *AL-TAFSIR WA 'AL MUFASSSIRĪN* (Dar al kutub al hadithah 1976).

³⁹*Id.*

⁴⁰*Id.*

⁴¹*Id.*

⁴²*Id.*

⁴³Claude Gilliot, *Exegesis of the Qur'an: Classical and Medieval. Encyclopedia of the Quran. Brill Online* (2007), available at http://referenceworks.brillonline.com/entries/encyclopaedia-of-the-quran/exegesis-of-the-quran-classical-and-medieval-EQCOM_00058.

in its theological variance” *Ta’wīlāt ahl al-Sunna* by Al-Māturīdī (d.333/944). Other works of the mature period that marked the development of the *tafsīr* tradition included the *tafsīr* of ‘Umar Zamaksharī (d. 548/1153), Fakhr al Din al Razī (d.606/1209), al-Qurtubī (d. 671/1273), and Jalal al-din al Suyutī (d. 911/1505). During this phase, the *tafsīr al Qur’an al ‘azīm* of Ibn Kathīr (d.774/1373) was influenced by Ibn Taymīyah’s (d.728/1328) attempt to reconcile the Qur’an and Sunna. Ibn Taymīyah’s suspicion of utilizing *‘isra’iliyat* to interpret the Qur’an as well as all sorts of intellectual speculation whether it was legal or interpretive (*tafsīr bil ra’y*).

While examining traditional commentaries on the Qur’an, it is important to keep in mind that the interpreters, among whom were jurists did not simply lay down a homogeneous literature of rigid male/female and Muslim/non-Muslim hierarchies. The focus was rather on marital life as a fluid interaction between a man and a woman, Muslim and non-Muslim, where thoughts, illicit acts, marital purposes, functions, and attitudes were at issue and not the fixing of boundaries based on gender and religion. The focus was on the capability of humans to abuse and on ensuring the perseverance of the religion. The focus was on maintaining a certain madhab and line of legal thought. Legal culture had knowledge, the right, the ideal, and human nature as its central themes.⁴⁴

2. The *Qiwwāmah* Verse Q. 4:34 in Traditional *Tafsīr*:

This section of the chapter presents the changes and shifts in meaning that occur in the nature and scope of the normative concept of *qiwwāmah* derived from Q. 4:34. This is done by examining *tafsīr* works of the Qur’anic verse. This section of the thesis makes the case that there is variability and arbitrariness in understanding and representing *qiwwāmah*. In particular, I am referring to the scope and nature of husband’s authority, divine preferential designations given to males over females, and a wife’s obedience to her husband. The discursive stages through which *qiwwāmah* evolves to become

⁴⁴Hallaq made a point on the effects of the processes of systemization reasoning that this process restructured “the raw legal material Islam encountered. This systemization was given sharp expression in the profound desire of Muslim scholars for logical coherence while at the same time they took into full consideration what they deemed to be divinely inspired propositions. See Wael Hallaq, *Review: The Use and Abuse of Evidence: The Question of Provisional and Roman Influences on Early Islamic Law*, 110 JOURNAL OF AMERICAN ORIENTAL SOCIETY 90 (1990).

understood as a natural result of inherent characteristics in males and females also suggests that the context in which the *mufassirūn* interpreted the verse also played a role. This discursiveness in understanding the concept of *qiwwāmah* prompts one to ask how can Q. 4:34 be read now; this variance in reading the verse suggests that there can be a number of other interpretive possibilities that are worth pursuing. In doing so, arguments behind the prohibition of an interfaith marriage between a Muslim woman and a *Kitābī* can be re-articulated.

Men are the protectors and maintainers [*qawwāmūn*] of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part you fear disloyalty and ill-conduct [*nushūzahunna*], admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, do not seek against them means (of annoyance): for Allah is Most High, Great (above you all).⁴⁵

The normative concept of *qiwwāmah* comes from the Qur'anic term “*qawwāmūn*,” which is the plural form of “*qawwām*” from the root q.w.m. and in Arabic can have numerous meanings which include: carry, get up, take, straighten, provide, rebel, support, and justice.⁴⁶ Thus, a plausible interpretation of the term *qawwāmūn* in Q. 4:34 can be maintainer or protector.

Following a chorological order in surveying the *tafsīr* literature on Q 4:34, I begin with the early *tafsīr* of Muqātil ibn Sulaymān (d.150/767). He begins his interpretation of Q. 4:34 in his work entitled *Tafsīr*, using the narrative device which figures as the immediate cause of revelation (*sabab al nuzūl*).⁴⁷ He then writes that (*yakūlu: al rijāl musallatūn 'ala al nisā'*) men have authority over women and that they have been favored over

⁴⁵THE QUR'AN: TRANSLATION (Abdullah Yusuf Ali, Tahrike Tarsile Qur'an 7th U.S. ed. 2001). Transliteration: “*Ar-Rijālu Qawwāmūna `Alā An-Nisā' Bimā Faddala Allāhu Ba`dahum `Alā Ba`din Wa Bimā `Anfaqū Min `Amwālihim Fālṣṣāliḥātu Qānitātun Ḥāfiẓātun Lilghaybi Bimā Ḥafiẓa Allāhu Wa Al-Lāī Takhāfūna Nushūzahunna Fa`izūhunna Wa Ahjurūhunna Fī Al-Madāji`i Wa Adribūhunna Fa`in `Aṭa`nakum Falā Tabghū `Alayhinna Sabīlāan `Inna Allāha Kāna `Alīyāan Kabīrāan.*”

⁴⁶MUḤAMMAD IBN MANZŪR, 12 LISĀN AL-‘ARAB 225-9 (Dār Sādir: Dār Bayrūt 2003).

⁴⁷MUQĀTIL IBN SULAYMĀN, 1 TAFSĪR MUQĀTIL IBN SULAYMĀN 370 (Dar ‘Ihyā’ al turāth 2002).

women in terms of rights and prerogatives (*haqq*), as they have authority in disciplining them. He reads *qānitāt* as those wives who are obedient to God and their husbands.⁴⁸

Al-Tabarī (d.310/ 923) was one of the later pre-modern *mufassirūn* whose standard work outlined men's disciplining task (*ta'dīb*) of women from Q 4:34.⁴⁹ To him this was a responsibility given by God to man since men are stronger and because they provide dowry (*mahr*) and maintenance (*nafaqa*). Following his establishment of men's ethical authority and superiority, he also made the case that their divine mission to provide *nafaqa* is in itself a privilege: "they are responsible for providing because they are superior, and they are superior because they are responsible for providing."⁵⁰

His younger contemporary al-Māturīdī (d.333/944) cites al-Tabarī's *tafsīr* of the verse in *Ta'wīlāt Ahl al-Sunna* as one of the plausible interpretations of Q. 4:34. Al- Māturīdī's work also includes divergent interpretations of the verse. He refers to the opinions of *ahl al ta'wīl* and *ahl al 'ilm*. The former read the verse as addressing spouses (*azwāj*) and emphasize the obligation of the husband to provide *nafaqa* based on the textual evidence "*bima anfaqu min amwālihim*" and *'ijmā' ahl al-'ilm*. Some of *ahl al 'ilm* though have interpreted the verse to indicate that a marriage is not valid without a male guardian since they are the *qawwāmūn* over their daughters before they are married.⁵¹ To this al-Māturīdī states that it has been said (*waqīl:*) that even if the verse was addressing both husbands and guardians, it would in fact count as evidence that marriage is valid without a guardian (*waliyy*); the preference was granted to some over others ; a preference in habitus (*khilqa*) as "God made men from the people who earn, trade, and perform all kinds of crafts, and settle their wives' matters, yet if some women are capable of settling their own matters (*qiyām bi 'umūrihinna*) which include buying and selling then marrying themselves off is also permissible even if men are *qawwāmūn* over them."⁵² In other words, men have been given this responsibility because of how society was made. However, "if a time comes

⁴⁸*Id.* at 371.

⁴⁹MUHAMMAD IBN JARĪR AL-TABARĪ, 8 TAFSĪR AL-TABARĪ: JĀMI' AL-BAYĀN 'AN TA'WĪL AL-QUR'ĀN 290 (Mu'asast al-Risālah 1999).

⁵⁰*Id.*

⁵¹ABĪ MANSŪR MUHAMMAD IBN MUHAMMAD AL-MĀTURĪDĪ, 3 TA'WĪLĀT AHL AL-SUNNAH 156 (Dar al-kutub al 'ilmiyya 2005).

⁵²*Id.* at 157.

when men are no longer capable of *nafaqa*, then a woman's *nafaqa* becomes the responsibility of her guardian (*mahārimihinna*) as that who is incapable of *nafaqa* becomes similar to a woman in *khilqa*.⁵³ Hence, a husband and a guardian in this case are no longer similar in *khilqa*. *Nafaqa* in this case is made a duty due to women's "weakness and lack of ability to earn, trade, and perform in all kinds of crafts due to her *khilqa*." He cites a tradition from Ibn Abbas commenting on the verse "Men are rulers over ('umara' 'alayhinna) women means that the woman has to obey her man in all of what Allah has commanded her, this includes the kind treatment of her family, the protection of his money, and his merits over her in *nafaqa* and power."⁵⁴ He also cites other opinions which claim that the preference of men over women is in reason, inheritance, and wealth. Al-Māturīdī then refutes Al Shāfi'ī's interpretation which claims that the verse addresses guardians and implies that *nikāh* can never be valid without a *waliyy*, as this would mean that a *waliyy* would also be responsible for *nafaqa* when al-Shafi'i madhab does not state that this is a *waliyy*'s obligation.⁵⁵

On the issue of a wife's obedience to her husband, Al-Māturīdī states that *qānitāt* can imply in Q. 4:34 either obedience to God or husband, or being in charge of their husband's rights (*qā'imāt bi hukūk azwājihinna*).⁵⁶ The difference between the last two is not stated. On *nushūz*, Al-Māturīdī emphasizes that men are instructed with good treatment (*husn al 'ishra*) and women with obedience (*tā'ah*). Hence if the latter disobey their husbands and refuse sexual relations with them, then the husband should "remind her of what God has made his right," and abandon her and not have conjugal relations until it becomes difficult for her.⁵⁷ Al-Māturīdī elaborates on the term admonishing defining it as "words that soften hard hearts, and make something desirable for the one who is disinclined." As a last resort men are instructed to beat their wives (*darb ghayr mubrih*) "in a manner that preserves the harmony (*mawwada*) and mercy (*rahma*)

⁵³*Id.* at 158.

⁵⁴*Id.*

⁵⁵*Id.*

⁵⁶*Id.* at 159.

⁵⁷*Id.* at 161.

between them.”⁵⁸ He didactically cites the Prophetic tradition "The best of you are those who are best to their families, and I am the best of you to my family.”⁵⁹

In *Ma‘ānī al Qur’an*, Al-Zajjāj (d.311/923), Al-Tabarī’s contemporary, interprets Q. 4:34 as meaning that “men are in charge of women in what they are entitled to from their husbands [*al rajul qayyim ‘ala al mar’ah fīmā yajib lahā ‘alahyhi*].” He perceives the preference (*tafdīl*) of men over women in terms of their knowledge and the differentiation between them because of men’s responsibility to provide *nafaqa*. Rather than using the term *tā’ah*, he reads *qānitāt* as those women who are in charge of what their husbands have a right to (*qānitāt ‘ay al qayyimāt bi hukuk azwājihinna*).⁶⁰ However, he does not specify what these rights are.

The *tafsīr* of the Mu‘tazilite Islamic scholar ‘Umar Zamaksharī (d.538/1144) marks the consolidation of a hierarchical reading of *qiwwāmah* in Q. 4:34 through providing amassing reasons for it.⁶¹ The author takes the construct of *qiwwāmah* to a new level as he outlines in a random fashion a series of skills, gender-based inherent characteristics, and inferences from juristic discourse. The author states that men are superior “in reason, resoluteness, determination, strength, writing, horsemanship, and spear-throwing.” Amongst men are ‘the prophets and ‘*ulama*’... they perform the *imāmah*, the *jihād*, the ‘*adhān*, the *khutbah*, *i‘tikāf*, loud *takbīrāt*, and are witnesses in *hudūd* and *qasās*.⁶² Zamaksharī also expressly makes the metaphor of the husband/wife relationship comparing it to the relationship between a ruler and his subjects as the latter too manage their subjects by ordering and forbidding them.⁶³ Al Razī (d.606/1209) adds to this list of justifications of what now has become a more generic assumption man’s (rather than

⁵⁸*Id.* at 162.

⁵⁹*Id.*

⁶⁰ABĪ ISHĀQ IBRĀHĪM IBN AL-SARĪAL-ZAJJĀJ, 2 MA‘ĀNĪ AL-QUR’ĀN WA-I‘RĀBUH 47 (‘ālam al kutub 1998).

⁶¹For a similar argument see Abou Bakr, *supra* note 34.

⁶²‘UMAR AL-ZAMAKHSHARĪ, 1 AL-KASHSHĀF ‘AN HAQĀ’IQ GHAWĀMID AL-TANZĪL WA-‘UYŪN AL-AQĀWĪL FĪ WUJŪH AL-TA’WĪL 505 (Dar al-kitāb al ‘arabī 1987). This kind of combination can also be found in the later *tafsīr Fath al-Qadīr* of Hanafī *mufasssīr* Al-Shawkānī (d.1250/1834). He writes that the preference of husbands was justified in that God favored men in occupying positions of caliphs, rulers, and conquerors. See MUḤAMMAD AL-SHAWKĀNĪ, 1 FATH AL-QADĪR: AL-JĀMI‘ BAYNA FANNAY AL-RIWĀYAH WA-AL-DIRĀYAH MIN ‘ILM AL-TAFSĪR 531 (Dār Ibn Kathīr 1993).

⁶³*Id.*

husband's) superiority over woman “*wilāyah* in marriage, divorce, and number of wives, and lineage.”⁶⁴

Al-Baidāwī also mentions the ruler/subject metaphor made in Zamaksharī's *tafsīr*. His contribution in interpreting Q. 4:34 though is his distinction between divine preference (*wahbī*) and acquired preference (*kasbī*) for men over women.⁶⁵ He states that God has favored men “with completeness in ‘*aql*, management, strength in carrying out tasks and divine commands.”⁶⁶ Based on the above he deduces that “this is why they [men] have been singled for prophet hood, imāmah, wilāya, obligation of jum‘ah prayers and jihad, nerviness, greater share in inheritance, and domineeringly take the decision of separation (*al istibdād bi al furāq*).”⁶⁷

In In his *tafsīr*, the Mālikī al-Qurtubī (d.671/1273) “signaled the beginning of a new trajectory that attempts to use either contemporaneous cultural views or the time's known scientific ‘facts’ as evidence to corroborate an exegete's perception of gender differences.”⁶⁸ He begins his interpretation of the verse mentioning the occasion of the verse's revelation; the verse was revealed when a man slapped his wife and she complained about him to the Prophet (PBUH). Her family who went with her said: “O Messenger of Allah! I gave him my daughter in marriage and he slapped her”. The Prophet kept saying: “Retaliation! Retaliation! And there is no other judgment to be held”.⁶⁹ But then verse Q. 4:34 indicating that Men are the protectors and maintainers of women was revealed. The Prophet (PBUH) said: “We wanted something and Allah wanted something else”.⁷⁰ This verse as the *fuqahā'* read it was not revealed to support the act condemned by the Prophet himself, but rather to regulate how a man should “discipline” his wife; al-Qurtubī notes that if a woman maintains the rights of her husband, then he should not abuse her, “but if they return to obedience, do not seek

⁶⁴FAKHR AL-DĪN AL-RĀZĪ, 10 AL-TAFSĪR AL-KABĪR 70-71 (Dār 'ihyā' al turāth al 'arabī 1999).

⁶⁵Muḥammad al-Shīrāzī al-Baydāwī, 2 Anwār al-tanzīl wa-asrār al-ta'wīl 72 (Dār 'ihyā' al turāth al 'arabī 1997).

⁶⁶*Id.*

⁶⁷*Id.*

⁶⁸Abou Bakr, *supra* note 34, at 94.

⁶⁹MUḤAMMAD IBN AḤMAD QURTUBĪ, 5 TAFSĪR AL-QURTUBĪ: AL-JĀMI' LI-AḤKĀM AL-QUR'ĀN 168 (Dār al-kutub al misriyya 1964).

⁷⁰*Id.* at 169.

against them means (of annoyance): for Allah is Most High, Great (above you all).”⁷¹ *Qiwwāmah* entails his duty to manage his wife’s affairs, disciplining her, keeping her in her home, and preventing her visibility to others, while the wife’s duty is to obey her husband so long as he does not ask her to commit a sin.⁷²

The ‘*illah* given for this *qiwwāmah* is the preference given for some men over some women. Al- Qurtubī cites some preferential designations such as men’s completeness in reason (‘*aql*), and the issue of inheritance in that men receive a greater share than women and they spend their wealth on dowry (*mahr*) and in maintenance (*nafaqa*).⁷³ Al- Qurtubī’s demonstration of preference is not merely based on material considerations but also on a certain perception of inherent gender-based traits. His works mark the commencement of a path turning personal gender perceptions into biological facts. He writes that:

It is said that men have the privilege of mind and better management... and it has been said that men have strong natures that women do not have because men’s disposition is determined by heat and dryness which gives them strength and hardness, whereas women’s disposition is determined by humidness and coldness, giving them the characteristics of leniency and weakness.⁷⁴

He adds that for Mālikīs and Shāfi’īs, if the man is unable to provide *nafaqa*, he becomes incapable of being a *qawwām* in which case the wife may choose to terminate the marriage since its purpose has been defeated.⁷⁵ Maintenance to Al-Qurtubī thus defines and justifies in part a husband’s (‘*illa* for) superiority over the wife. To Hanafis on the other hand, the inability to provide *nafaqa* does not create ground for terminating the marriage contract. Q. 2:280 states that “if the debtor is in a difficulty, grant him time till it is easy for him to repay.”⁷⁶ Al- Qurtubī emphasizes that these are the ‘*illah* for *qiwwāmah* even though he simultaneously asserts that the pronoun “*hum*” in the Arabic

⁷¹*Id.*

⁷²*Id.*

⁷³*Id.*

⁷⁴Cited in Abou Bakr, *supra* note 34, at 93.

⁷⁵*Id.*

⁷⁶QURTUBI, *supra* note 69, at 169.

word “*ba’aduhum*” which literally means some of them, refers to both men and women.⁷⁷ He does not attempt to reconcile the contradiction between both his statements, which Sheikh Muhammad Abduh, one of the leaders of 19th century reformist movement does in his *tafsīr*.

The next section of the verse characterizes righteous women as “*qānitāt*” which Al-Qurtubī interprets as a divine command for wives to obey their husbands. The expression *qānitāt*” (*qānit* for men) comes from the root word q.n.t. and is used to describe a reverent and submissive Muslim, a worshipper or a devout Muslim who prolongs his performance of prayers, and all those who fulfil God’s commands.⁷⁸ He immediately backs up his interpretation with a Prophetic tradition “It was narrated that Abu Hurayrah said: It was said to the Messenger of Allah (peace and blessings of Allah be upon him): Which of women is best? He said: “The one who makes (her husband) happy when he looks at her, obeys him when he tells her to do something, and does not disobey him with regard to herself or her wealth in a way that he dislikes.” Al-Qurtubī defines *nushūz* as wife’s disobedience to the husband, and specifically refers to the woman who makes it strenuous for her husband to have access to her “*istas’abat ‘ala ba’liha.*” When discussing beating, he mentions that it is restricted only to the matter of the wife’s sexual availability, and its purpose is only to ensure righteousness rather than to induce harm, likening this practice to one who is correcting their “*ghulām.*” He supports this statement with a Prophetic tradition where the Prophet stated during a sermon in his last pilgrimage to Mecca: “Lay injunctions on women kindly, for they are prisoners with you having no control of their own persons.”

In his *tafsīr*, Ibn Kathīr (d.773/1373) takes the construct of *qiwwāmah* in Q. 4:34 to a new level by connecting it to the concept of *darajah* which appears in the verse Q. 2:228. He extends the influence of the concept of *qiwwāmah* from the home to the public sphere as he cites the Prophetic tradition “No people will prosper that has delegated a woman to lead their affairs.” Ibn Kathīr also cites one of the preferential designations of men over

⁷⁷ABĪ ‘ABDALLĀH MUḤAMMAD IBN AḤMAD AL-ANṢĀRĪ AL-QURTUBĪ, TAFSĪR AL-QURTUBĪ : AL-JĀMI‘ LI-AḤKĀM AL-QUR’ĀN Vol.5, 148 (Dar Al Fikr)

⁷⁸IBN MANZŪR, *supra* note 46, at 197.

women as being discipline, which is in line with *sabab nuzūl al 'ayah*.⁷⁹ Ibn Kathīr who was influenced by Ibn Taymīyah uses the method of reported traditions and hadith in his *tafsīr* extensively. Ibn Kathīr reads *qawwāmūn* as “human predisposition of man to be leader of the woman, her superior, who directs her, and has a right to correct her if she deviates from the straight path.”⁸⁰

In his biography (*sīrah*) of the Prophet, *Zād Al-M'ād*, Ibn al-Qayyim (d.751/1350), a disciple of Ibn Taymiyyah (d.728/1328), justifies the obligation of a woman to carry out household chores as necessary to maintain the concept of *qiwwāmah* for if a man serves his wife at home, the *qiwwāmah* would be undermined. He argues that man provides maintenance (*nafaqa*) for both sexual availability and domestic service provided by the wife in accordance with what is customary, and “the customary is the woman serving her husband and taking care of the home.” He goes on to emphasize that the wife is restrained/confined in her husband’s home and cites the hadith “Show fear of God in your relations with women for they suffer [‘*awānīn*] in your homes,” Ibn al-Qayyim explains the ‘*annī* [plural ‘*awānīn*] “is a prisoner, and that the rank of those restrained is to serve those whom they fall under their hand/authority; for there is no doubt that marriage is enslavement, as some of the Salaf have said: Marriage is enslavement, let everyone of you weigh carefully [to whom] he enslaves his daughter.”⁸¹

Ibn Al-Qayyim wrote that “the wife is her husband’s prisoner, a prisoner being akin to a slave. The Prophet directed men to support their wives by feeding them with their own food and clothing them with their own clothes; he said the same about maintaining a slave.”⁸² Though this analogy might be deemed harsh and unjust to women, other factors should be taken into consideration. The *Ahl Al-hadith* empiricist scheme, of which the Hanbalī *madhab* is generally considered the successor, viewed the Qur’an and the “authentic” hadith as the only valid source of Islamic law and theology. They chose to

⁷⁹IMĀD AL-DĪN ABĪ AL-FIDĀ’ ISMĀ’ĪL IBN KATHĪR AL-DIMASHQĪ, TAFSĪR AL-QUR’ĀN AL-‘AZĪM Vol.2 (Dar Tibah 2002)

⁸⁰*Id.*

⁸¹MUḤAMMAD IBN ABĪ BAKR IBN QAYYIM AL-JAWZĪYAH, 5 ZĀD AL-MAĀD FĪ HADY KHAYR AL-ĀBĀD MUḤAMMAD KHĀTĪM AL-NABĪYĪN WA-IMĀM AL-MURSILĪN 171 (Mu’asasat al-Risalāh 1994).

⁸²MUḤAMMAD IBN ABĪ BAKR IBN QAYYIM AL-JAWZĪYAH, 2 A’LĀM AL-MUWAQQI’ĪN ‘AN RABB AL-‘ĀLAMĪN 106 (Bayrūt: Dār al-Jīl; 1973).

resort to weak (*da'if*) hadiths over principles deduced from the Qur'an or from reasoning by analogy.⁸³

Al-Suyūṭī's (d.911/1505) qur'anic commentary *tafsīr al-jalālayn* also emphasized different aspects of male authority during the Mamluk period where increased women's activity in the public sphere resulted in the issuance of edicts that tried to limit the presence of women in the public sphere. His work emphasized "a wife's subservience and obedience to husband's orders, and the prohibition of going outside of the house without his approval."⁸⁴

The above section presented an analysis of the discourse on the concept of *qiwwāmah* derived from Q. 4:34 in the *tafsīr* tradition. This discourse is marked by transformations and creations of meaning by the interpreters "according to their own personal views stemming from their historical, sociocultural contexts." These works mark the shift in meaning of *qiwwāmah* from responsibility that is limited into an authority and privilege that are not only present on the financial level but in all aspects of the marital relationship. Furthermore, the construct of *qiwwāmah* was instrumental in establishing an Islamic model of the marriage institution, one where gender relations are based on normative male leadership. This role that *qiwwāmah* plays in maintaining what is perceived as an Islamic model of the marriage institution has a long-lasting impact on how IFM are interpreted from the textual evidence and regulated in Islamic legal discourse.

The next section of this chapter provides a historical overview of the evolution of Islamic jurisprudence. Having contextualized how the jurists interpreted and deduced legal rules from the textual sources, I then turn to look at how marriage is regulated in *fiqh* discourse. Marriage in *fiqh* discourse is perceived in a hierarchical fashion. Marriage is perceived as a kind of ownership and analogies are made in its regulation to buying a slave. The section that follows then demonstrates how this is manifested in the arguments supporting

⁸³DUDERIJA, *supra* note 22, at 30.

⁸⁴Cited in Abou Bakr, *supra* note 34, at 97.

the prohibition of a marriage between a Muslim woman and a *Kitābī* man. Finally, I look at how the conceptualization of the religious other in *fiqh* discourse and *tafsīr* tradition has been detrimental in building the consensus on the prohibition.

B. Islamic Jurisprudence:

The first part of this section provides the historical background and evolution of the two main approaches to the Islamic tradition namely: the intellectual movement (*ahl al ra'ay*) and the traditionalist movement (*ahl al-hadith*), demonstrating the similarities and differences between them. An examination of the ideological disagreements and the developments that took place following the Prophet's death and the resulting emergence of the four Sunni schools (*al-madhāhib al-'Arba'a*) is necessary to understand how mainstream Sunni Islamic jurists approached, read, and understood the textual sources namely: the Qur'an and the Sunna. This examination is also necessary to understand how mainstream Sunni Islamic *fuqahā'* established authority. This authority continues to exercise power despite the apparent lack of concision and clarity of what the dynamic and fluid concepts of *qiwwāmah*, *mushrik*, *kāfir*, *Kitābī*, and *Muslim* entail when it comes to interfaith marriages in Islamic legal discourse.

The second part of this section examines the way the concept of *qiwwāmah* derived from Q 4:34 has affected the traditionalist jurists' understanding of the marital relationship. This will be done mainly by looking generally at marriage as understood by classical Islamic *fuqahā'*. I specifically show how the hasty prejudicial understanding of *qiwwāmah* as absolute male dominance and supremacy in marriage had a major impact on the jurists' discourse regulating marital relations. It is also reflected in the logic of the Islamic marriage contract. The section discusses and analyzes how the *fuqahā'* conceptualized marriage (*nikāh*) and the essential elements of the marriage contract (*'aqd al nikāh*), the linguistic formulas used to describe the offer of *nikāh* and analogies made by the *fuqahā'* to describe the transaction of a marriage, maintaining relations, and termination of the marriage contract. This section elucidates the logic of the *'aqd al nikāh* in Islamic law treatises. This logic confirms the perception that the husband has the right to and

authority over his wife akin to a commodity acquired so long as maintenance (*nafaqa*) continues.

The third part of this section then briefly surveys the Qur'anic and Prophetic tradition's approaches to slavery (*riqq*). It examines the etymology of the concept of *riqq* and how *riqq* became an indispensable element in the marital relationship for the *fuqahā'* in a period of political takeover and Islamic conquests where slavery and concubinage flourished. The third part of this section also contrasts the derogatory effect of the constructed concept of *qiwwāmah* regarding women's status with the revelation and tradition encouraging people to free slaves, most of which were women, considering this as an act of piety. I make this contrast to highlight the emancipatory dimension of the message of the Qur'an that the *fuqahā'* depart from when analyzing marital relationship.

The fourth part examines the analogy made between an interfaith marriage between a Muslim woman and a *Kitābī* man and a *Kitābī* master owning a Muslim slave in Islamic law treatises to justify the prohibition of these interfaith marriages. Finally, in the fifth part of this section, I closely look at how the concepts of *kufr*, *shirk*, and *'imān* that appear in Q. 2:221, Q. 60:10, and Q. 5:5 were articulated and used in *fiqh* and *tafsīr* literature. It also demonstrates the disagreement among the jurists on whether to categorize *Ahl al-kitāb* as *mushrikīn* or not and over which groups to be exactly considered as part of *Ahl al-kitāb*.

1. The Evolution of Islamic Jurisprudence:

In order to gain a better understanding of the depth of the argument behind the reasoning to prohibit interfaith marriage, it is important to examine how different *madhāhib* and approaches have developed following the death of the prophet as a result the disagreement between people of considered opinion (*ahl al ra'y*) and the traditionalist movement (*ahl al-hadith*). This section examines how different Muslim groups came to understand the Qur'an and Sunna under different lights and analyzes the consequences of such a study on how scholars came to understand concepts such as *qiwwāmah* and *riqq* as

reasoning to prohibit/ allow certain aspects in the marital relationship (including interfaith marriage).

Being the main heritage of the Muslim community, the Qur'an and Sunna are viewed highly by the all Muslims as being the core of Islamic tradition (*turāth*) and as being a body of knowledge that provides guidance from the smallest to the largest of decisions pertaining to both individuals (*fard*) and the nation (*'ummah*). In spite of this, the Qur'an and Sunna remain a contested field where disagreements over interpretations are ongoing. Thus, the *turāth* can be perceived in accordance with how the Qur'an and Sunna “have interacted throughout Islamic history with all sorts of persons, forces, and situations to create an Islamic canon of doctrine, philosophy, ethics, [jurisprudence], and social and political attitudes and notions.”⁸⁵ It is a “cumulative tradition,” a religio-historical construct; this tradition is “diverse, it is fluid, it grows, it changes, it accumulates.”⁸⁶

While the Qur'an and Sunna are notably the most important sources of *turāth* and on which all juristic rulings are based, other sources of Islamic law include consensus (*'ijmā'*) and analogical reasoning (*qiyās*). These sources, however, remain later derivations that are dependent on the aforementioned sources.⁸⁷ On the other hand, while there is agreement that the Qur'an and Sunna are the two main sources to which the *'ummah* should go to for guidance, nevertheless, since the very early stage of the Muslim community, disagreements on how each group chooses to interpret these two sources have continued.

There are two main reasons for such disagreement at such an early stage. The first concerns the characteristics and structure of the guidance provided by the Qur'an and Sunna themselves in relation to the diversity of issues (political, legal, ethical and otherwise) that Muslims required answers to after the Prophet's death. The second is the speed at which the religion's political and religious authority expanded which meant that

⁸⁵IBRAHIM ABU RABI'I, INTELLECTUAL ORIGINS OF ISLAMIC RESURGENCE IN THE ARAB WORLD 41-2 (SUNY Press 1996).

⁸⁶*Id.*

⁸⁷WAEEL HALLAQ, A HISTORY OF ISLAMIC LEGAL THEORIES 80-100 (Cambridge University Press 1997).

there was a need for the documentation of Islamic tradition.⁸⁸ These two reasons presented a problem at such an early stage which was solved with the creation of differing methods of documentation of the Qur'an and Sunna as well as different schools of thought and schisms. These schools tried to provide answers to the diversity of questions posed by the Muslim community at that time. These eventually resulted in the *madhāhib* which are now notably known as the four main Sunni schools of thought and whose origins can be traced to two groups mainly *ahl-ra'y* and *ahl al-hadith*.⁸⁹ While other groups and factions may have contributed to what we see now as the conventional or traditionalist's view on Islam, this section focuses on these two groups in particular. What follows is a brief elaboration on these two groups and how their thoughts and debates have shaped and created a paradigm shift in looking at Islamic tradition.

With the two challenges facing the Muslim community: the documentation of Islamic tradition and the attempts to answer varying questions using the available sources; an examination of what is considered to be a constituent of Islamic tradition and what is not took place. A process of traditionalization of Islamic thought started taking place. What was considered to be a constituent of Sunna was now determined more by the written collections that were systematically collected by those referred to as muhadithin/ *ahl al hadith*.⁹⁰ Prophetic model challenged other Sunnan and *ra'y* even though it was “often the case that the *sunnan* and *ra'y* constituted the subject matter from which the content of the Prophetic narrative was itself derived. Prophetic hadith was a logical substitution for these sources.”⁹¹ This process had certain consequences on the use and applicability of *ra'y*/opinion in the day-to-day problems and rulings made by jurists who adopted the outlook of *ahl al-hadith*; that is, that *'aql* and *ra'y* became less depended on than in earlier phases. *Ahl al-hadith* also had a more practical outlook on the application of Sunna. Greater focus was given to the practice of revivification of Sunna (*'ihya' as-Sunna*) ignoring the spirit of the text itself.⁹²

⁸⁸HALLAQ, *supra* note 20, at 36-50.

⁸⁹*Id.* at 55-60.

⁹⁰*Id.*

⁹¹*Id.* at 45.

⁹²DUDERJIA, *supra* note 22, at 34.

The effect of hadithification on the understanding of the scope of Sunna can be better conceptualized by considering how Sunna was initially viewed as engulfing what was defined as " a general, not systematically defined, behavioral practice of the early Muslim community predominantly formulated, preserved, and transmitted either orally or *in actu* independent of its any written recording."⁹³ This understanding of the effect that *ahl al-hadith* had on the scope of Sunna sheds some light on the difference in philosophy between them and between *ahl al ra'y* and the *madhhab*-based *fuqahā'*. Throughout the eighth century, Iraqi, Syrian, and Medinese scholars utilized *ra'y* extensively when reasoning; *ra'y* "encompassed a variety of inferential methods that ranged from loose reasoning to arguments of a strictly logical type, such as analogy or the argumentum a fortiori."⁹⁴ The *madhhab*-based *fuqahā'*, though proponents of using *ra'y*, did not use it liberally, but only to a certain extent using tools such as *qiyās*, preference (*istihsan*) and speculation (*nazar*).⁹⁵ Resorting to these methods was only in the cases where no clear or close verdict was found in Qur'an and Sunna. The scope of Sunna and the types of hadith used, however, were defined differently by them in comparison to *ahl al-hadith's* definition of the scope of Sunna.⁹⁶ A criticism of the *madhhab*-based approach by *ahl al-hadith* in those centuries, however, was the existence and application of the concept of *taqlīd*, whereby jurists formulated new interpretations of the Qur'an and Sunna but only within the framework of the *madhhab*-based legal theory hermeneutic.⁹⁷ This mechanism was perceived as an innovation (*bid'ah*) since it places equal weight on both a Qur'anic or sacred prophetic text and an opinion voiced by a later *faqīh*. Islamic legal theory as we know it today is a manifestation of the traditionist-rationalist synthesis that developed following the inquisition (*Mihna*);⁹⁸ the theory was completely established by the tenth century though most legal doctrine was collected and in place by late 8th century. The inquisition represented the zenith of the struggle between traditionists "whose cause Ibn Hanbal [d.241/855] was seen to champion, and the rationalists, headed by the caliphs and

⁹³*Id.* at 28.

⁹⁴HALLAQ, *supra* note 20, at 48-9.

⁹⁵*Id.* at 50-51.

⁹⁶DUDERJIA, *supra* note 22, at 34-5.

⁹⁷WAEEL HALLAQ, AUTHORITY, CONTINUITY, AND CHANGE IN ISLAMIC LAW 257-9 (Cambridge University Press 2001).

⁹⁸HALLAQ, *supra* note 20, at 56.

the Mu'tazilites, among whom there were many Hanafites.”⁹⁹ The shift from practice-based Sunna to formal hadith brought conformity to the new single universal prophetic model that was fully developed during the rise of the traditionist movement.¹⁰⁰ As the influence of prophetic authority increased, the authority of *ra'y* and other Sunnan diminished.¹⁰¹ A clear pattern of affiliation of scholars with one of the two movements emerged by the middle of the ninth century.

2. Marriage in Classical Islamic Jurisprudence:

This section examines how the contractual elements of marriage are conceptualized in Islamic law treatises. The legal translation of the rules governing slavery are relevant to the arena of marriage and make it intelligible. The purpose here is to highlight how slavery, as a part of the functioning legal framework, applies to interfaith marriages. This is because slavery has been essential in institutionalizing male authority and hierarchical gender rights in the family based on unequal but mutual exchanges.

Nikāh occupied a central place in Islamic legal discourse. The *fuqahā'* elaborated on the rules of contracting marriage, and those that govern husband and wife rights and duties after marriage. This centrality of marriage in Islamic legal discourse can partially be attributed to the Qur'an and Prophetic tradition, the primary sources of Islamic law. According to Q. 4:1; 7:189; 39:6, God created the first human being and its mate (*zawj*) from one soul (*nafs*). Semantically, the word, *azwāj* (literally pair), has been defined by Ibn al-Qayyim despite his conservatism, as the two things that are similar, homologous, and equal.¹⁰² Marriage is presented in Islamic tradition and legal discourse as a path to

⁹⁹*Id.* at 57.

¹⁰⁰*Id.*

¹⁰¹*Ijtihad al-ra'y* involved exertion of mental energy for the sake of arriving through reasoning at a considered opinion, while *qiyas* involved disciplined and systemic reasoning on the basis of the Quran and the hadith. A third tool to arrive at a considered opinion was juristic preference (*istihsan*); a mode of reasoning that yields reasonable results as it is driven by fairness and common sense, and the purpose of which to achieve equity. This latter inferential method was rejected later on since the arguments developed using it were seen by jurists as not grounded in revealed text; *istihsan* came to only be used by the Hanafite and Hanbali Schools after it was theoretically reconstructed.

¹⁰²MUḤAMMAD IBN ABĪ BAKR IBN QAYYIM AL-JAWZĪYAH, 5 AI DAW'U AL MUNĪR 'ALA AL TAFSĪR 7 (Mo'asasat al-Nur 1999).

contentedness and wellbeing; a foundation of social order and communal harmony.¹⁰³

Marriage served both individual and social purposes by safeguarding chastity and protecting the lineage. In other Qur'anic verses, rules were laid out with regards to suitable suitors (Q. 2:220. Q. 2:221 and 4:22-23), marriage arrangements (Q. 2:235), and marital rights and duties (Q. 4:34).¹⁰⁴ Hadith literature introduced some contentious material leading to the development of legal doctrine concerning the position of women in the marriage.

'Aqd al-nikāh (and lawful forms of concubinage) legalized sexual relations in Islamic Law. Within this basic definition of *'aqd al nikāh, fuqahā'* provided various analyses. Khalil ibn 'Ishāq, a Maliki *faqīh*, emphasized that *'aqd al-nikāh* allowed for husband's enjoyment of his wife's body.¹⁰⁵ A Hanafi *faqīh*, Al- Marghinanī (d.593/1197) outlines the position of the Hanafi madhab stating that "for us marriage is ownership by way of owning sexual pleasure in a person and this right is established by marriage and because there is room for the metaphor, the marriage contract can be made using the terms used in a sale transaction but not in terms of rent or terms of writing a will."¹⁰⁶ Marriage was regarded as a form of ownership (*milk*) based on a contract that brings about interdependent gender-based rights and responsibilities. This interchange of claims did not indicate equal status between husband and wife. A husband had more rights with regards to "divorce, polygamy, and the settlement of marital conflicts."¹⁰⁷ A husband's *milk* over his wife and particularly her sexual organ (*farj, bud'*) was obtained in exchange for the dowry (*mahr*).¹⁰⁸ These views of marriage illustrate the extent to which the dimension of sexuality was dominant in the *fuqahā'* understanding of the marital relationship. In contrast to their lengthy discussions and emphasis on money and sexual

¹⁰³ Men are told in the Qur'an about their wives that "They are your garments and you are their garments." Q. 2:187. In another verse, Q. 30:21 both wives and husbands are told that God "created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts)." In a report, the Prophet said "O young men! Whoever among you has the ability should marry, for it restrains the eye and protects chastity."

¹⁰⁴ JUDITH TUCKER, WOMEN, FAMILY, AND GENDER IN ISLAMIC LAW 38 (Cambridge University Press 2008).

¹⁰⁵ KHALIL IBN ISHAQ, I MUKHTASAR KHALIL 96 (Dār al-hadīth 2005).

¹⁰⁶ ALI IBN ABI BAKR AL-MARGHĪNĀNĪ, I AL-HIDĀYAH : SHARH BIDĀYAT AL-MUBTADĪ 185 (Dār Ihyā' al-turāth al 'arabi)

¹⁰⁷ Kecia Ali, *Marriage* in THE QUR'AN: AN ENCYCLOPEDIA (ed. Oliver Leaman, Routledge 2006).

¹⁰⁸ *Id.*

enjoyment as core values determining the nature of the relationship between the spouses, the *fuqahā'* did not elaborate in their statements and rulings on the importance of other non-contractual aspects of the marriage. Aspects of marital relations such as good treatment (*husn al 'ishra*), affection (*mawwada*), mercy (*rahma*), harmony, and other ethical values that must be observed by both parties in order to achieve a good conjugal life remained outside the realm of the legal.

Some of the *fuqahā'* also made analogies between unilateral divorce (*talāq*) and manumission.¹⁰⁹ In his *Ihyā' 'ulūm al-dīn*, Imam Ghazālī (d.505/1111) writes that “it is incumbent upon the guardian also to examine the qualities of the husband and to look after his daughter so as not to give her in marriage to one who is ugly, ill-mannered, weak in faith, negligent in upholding her rights, or unequal to her in descent [He then cites Prophetic tradition, Marriage is enslavement]... Exercising caution on her behalf is important, because she becomes a slave by marriage and cannot be freed from it, while the husband is able to obtain divorce at all times.”¹¹⁰ He further adds that “whoever gives his daughter in marriage to a person who is unjust, licentious, heretical, or an inebriate commits a crime against his religion and exposes himself to the wrath of God for having severed his parental tie by having made a bad choice.”¹¹¹ Formative-period *fuqahā'* and many of their disciples utilized “overlapping linguistic, conceptual, and legal parallels between marriage, slavery, and ownership.”¹¹² Sexual agency was seen as a characteristic of manhood; once he became a husband a male slave was even granted many masculine prerogatives that distinguished him from a female slave.

In transacting marriage, the question of whether a woman was able to contract the marriage herself was also a controversial issue. It presented another aspect of what defines male and female for the *fuqahā'* when it comes to validating a marriage contract,

¹⁰⁹Abū Hāmid Al-Ghazālī, *The Revival of the Religious Sciences* (Jun.2007), available at <http://www.ghazali.org/works/marriage.htm>.

¹¹⁰ *Id.*

¹¹¹ *Id.* In a report, the Prophet said “Whoever gives his daughter in marriage to a licentious man has betrayed her womb.” Imam Ghazālī cites another tradition where a man consulted Al-Hasan on whom he should give his daughter’s hand in marriage, he replied “To the one who fears God; because if he loves her he will be kind to her; and if he hates her, he will not wrong her.”

¹¹²ALI, *supra* note 26, at 50.

resulting in a clearer idea and a full picture of how the social status and role of woman is constructed in the marital household. From the very beginning, a female lacked the capacity to grant sexual access to herself. Al-Muzanī (d.264/876) stated that a woman’s “sexual organ is forbidden before the contract and it is never made lawful except that the marriage guardian says ‘I have married her to you.’”¹¹³ In the *Mudawanna, wilāyat al nikāh* was seen as essential in determining legitimacy of the marriage since the guardian (*waliyy*) has a share in and authority over the female’s *bud’*.¹¹⁴ The guardian should therefore oversee the transfer of this authority to the husband. In *Al-Mabsūt*, Imam Sarakhsī highlights the importance of the suitability requirement in particular of the groom (*kafā’a*); he says that even if the suitor turns out to be of a higher social status than what he informed the guardian and his daughter after the marriage has occurred, both the guardian and the daughter have no choice but that she stay with the husband. To Sarakhsī it is “as if he [the guardian] has bought something that is defective but found that it is in fact fit and undamaged.”¹¹⁵ In a second scenario, Sarakhsī indicates a case in which the suitor conveys to the guardian and his daughter that he is of a higher social status but then they later learn that the husband is equal to them in social status. In this case, the guardian has no right to separate them since the requirement of *kafā’a* has been attained. Nevertheless, the wife may request a separation since the increased benefit of the husband being of a higher social status, an aspect of her acceptance of the marriage, does not exist. Sarakhsī adds that intercourse is a form of degradation for the woman, thus “a woman might accept intercourse with a man who is better than her, but not with a man who is equal to her. Hence, if a man misguides a woman with vain hopes, her lack of complete satisfaction is apparent and so the matter is left to her preference.”¹¹⁶ Al- Sarakhsī emphasizes that the purposes (*maqāsid*) which *nikāh* encompasses, including companionship (*sohba*), intimacy (*ishra*), familiarity (*ulfa*), and establishment of kinship (*ta’sīs al qarābāt*) can only exist when suitability (*kafā’a*) is attained. Al-Sarakhsī argues that:

the acquisition of a woman is a form of humiliation (*al mulk ‘ala al mar’ah zillah*), and to it the Prophet (PBUH) pointed: ‘Marriage is enslavement let everyone of you weigh

¹¹³*Id.* at 46.

¹¹⁴*Id.*

¹¹⁵MUḤAMMAD IBN AḤMAD SARAKHSĪ, 5 KITĀB AL-MABSŪT, 29 (Dār al- ma‘rifah 1993).

¹¹⁶*Id.* at 30.

carefully [to whom] he enslaves his daughter,' and self-humiliation is prohibited [*harām*] for the Prophet (PBUH) stated: 'No believer may humiliate himself,' yet what has been allowed from it is allowed for the purpose of necessity (*darūra*), and in having intercourse with who is not suitable for her is further humiliation (*ziyādat al zul*) to the woman and there is no *darūra* for this additional humiliation and for this *kafā'a* has been considered.¹¹⁷

3. *Riqq* in Islamic Jurisprudence:

R.q.q. is the root for *yariqq* or *raqīqa*, the plural forms of which include *riqāq* or *raqā'iq*. In Arabic *riqq* can mean: delicate, enhanced, thin, tender, gentle, kind, weak, and vulnerable. Ibn Manzūr in his explanation describes the female as *raqīqa*. *Raqqa* another word from *riqq* means that a person has become a slave; Abu Abbas mentions that a slave is described as tender/vulnerable (*raqīq* or *raqīqa*) because he/she is humiliated by and subjected to his/her respective owner.¹¹⁸ In the Qur'an, numerous words are used to refer to a slave, yet each has a specialized usage. '*abd* is one of the terms rarely used in the Qur'an to discuss slaves and is more often used to mean servant or worshipper.¹¹⁹ The root meaning of the word is thought to refer to labor in other languages such as Hebrew. Thus, the word used to refer to a slave or a laborer came later to also mean a worshipper serving God. Historical evidence also shows that the logic of worship associated with the word '*abd* came to the Arabs from their pre-Islamic neighbors.¹²⁰ In the Qur'an, slaves, specifically female concubines, are also mentioned using the periphrasis *ma malakat 'aymānukum*. *Raqaba* was used when emancipation was indicated (*tahrīr raqaba*). It is important to note here that the words *jāriya* and *raqīqa* were not mentioned in the Qur'anic text at all.¹²¹

Despite its canonizing the distinction between the free and the slave (Q. 16:71), the Qur'an recommended equality between the free and the slave, generosity (Q. 24:33), and kindness towards slaves as well as marrying them off. This occurred as the Qur'anic text

¹¹⁷*Id.* at 23.

¹¹⁸MUHAMMAD IBN MANZŪR, 6 LISĀN AL-‘ARAB 205-7 (Dār Sādir: Dār Bayrūt 2003).

¹¹⁹Jonathan Eugene Brockopp, *Slavery in Islamic Law: An Examination of Early Maliki Jurisprudence* (1995) (unpublished Ph.D. dissertation, Yale University) (On file with the American University in Cairo Library). Brockopp affirms that in the few times the word '*abd* was used to refer to a slave in the Qur'an, a contextual qualifier was used. The '*abd* was either contrasted with a free man or a female slave. See 139-40.

¹²⁰ARTHUR JEFFERY, *THE FOREIGN VOCABULARY OF THE QUR'AN* 209-10 (Brill Academic Publishers 2007).

¹²¹Brockopp, *supra* note 119, at 141.

came to disregard some of the rules that existed before Islam disfavoring women and slaves, but did nothing to change their status in the societal structure; a structure that as its basis, necessitates a hierarchical relationship between both man and woman and master and slave. Female slave prostitution was limited and non-marital intercourse with female slaves was regulated. Placing slaves in the category of the weak and vulnerable was also unique to the Qur'an. Despite parallel Roman, Christian, and Jewish practices, the Qur'an envisioned the most progressive rules at the time regarding slavery.¹²²

To further understand how a concept such as *riqq* has influenced the logical argument against interfaith marriage, a detailed examination of aspects such as slavery and concubinage is a must. Both were commonplace during the Abbasid era –an era during which much of the canonical texts in Islam came to light. This understanding is necessary to fully appreciate how such practices may have affected the perception of gender roles and women in general. This becomes particularly important when contrasted with the existing perceptions and practices that prevailed during the first century. Leila Ahmed creates such a contrast in her book, *Women and Gender in Islam* in her discussion of the process by which the perception of women and their real life scope of power changed with the movement of the political and social capital of Islam from Arabia to Mesopotamia and the advent of the conquests and the consequent wealth brought to Muslims at that time. The next section highlights how such changes have taken place and how they have affected the mindsets and texts that came out during this era.

During the first and second Islamic centuries, the concept of slavery was one that had changed only slightly in Arabia mainly due to Islamic teachings calling for a kinder and more generous treatment of slaves.¹²³ The emancipation of slaves was viewed as an act of piety and thus was highly encouraged.¹²⁴ The position of slaves in society was one that rendered them as second-class family members and private servants. This position later changed in the Abbasid and Umayyad eras as the number of slaves per person jumped

¹²² *Id.*

¹²³ Brockopp, *supra* note 119, at 155-6.

¹²⁴ *Id.* at 157.

exponentially from tens to thousands.¹²⁵ With such an exponential increase in numbers, the importance and significance of slaves decreased in society, as well as the significance of freeing them.¹²⁶ The usage and treatment of slaves was also something that changed drastically. Originally, slaves were used for finishing private errands or militarily. By the time of the Abbasid era their usage ranged from being entertainers to laborers finishing public projects by the state.¹²⁷ While the kind, fair, and generous treatment of slaves and support for their emancipation was something that was encouraged in the first centuries, by the Abbasid era the treatment of slaves, especially concubines, had deteriorated significantly alongside their status.¹²⁸

By the beginning of the Abbasid era the social structure of the relationship between men and women had changed. Men had an upper hand in their exercise of power over women as the conquests had created an abundance in the supply of women and children in the slaves markets.¹²⁹ It had thus become easier to "obtain" a female slave/ concubine than to find a wife with all the obligations that entailed.¹³⁰ With this becoming a widespread phenomenon among the elite men of the Abbasid era, the women, who came from varying backgrounds and creeds and thus had an effect on the infiltration of their customs and its integration with Muslim customs, resorted to less outspoken methods of maintaining their social, psychological and material wellbeing amongst the other concubines or wives in one household. They were less outspoken in contrast to methods used by Muslim wives in Arabia during the first and second Hijri centuries, were more "forthright" in their demanding contractual rights, bringing to light the extent to which their scope of power within the household had become limited if not non-existent.¹³¹

The abundance of female slavery and concubinage had other negative impacts besides limiting the scope of female power. Ahmed elaborates on how women had come to be

¹²⁵*Id.* at 158.

¹²⁶*Id.* at 159.

¹²⁷*Id.* at 159.

¹²⁸AHMED, *supra* note 26, at 83-4. Leila Ahmed mentions killing and usage of poison as a common way of getting rid of a concubine "without any questions raised."

¹²⁹*Id.*

¹³⁰*Id.* at 85.

¹³¹*Id.*

viewed as objects of sexual interest. Such a view may have been what later affected "[t]he weight Abbasid society gave to the androcentric teachings over the ethical teachings in Islam" and thus was what was reflected inadvertently in written works and interpretations of Qur'anic texts which provided the licensing for such misogynist practices to prevail during that era.

4. Marriage as enslavement in IFM Regulations:

The purpose of this section is to show that how interfaith marriage regulations in Islamic tradition lack a uniform representation and how these regulations are largely based on two factors: marriage as enslavement of the wife and the nature and status of the religious other in the Islamic tradition. This section will examine marriage as enslavement in IFM regulations. It surveys the readings and views of prominent early and classical period *fuqahā'* on and *mufassirūn* of how an ideal interfaith marriage between a Muslim and the religious other should be. A lack of uniformity is noticed while carrying out this survey of authoritative *fiqh* and *tafsīr* works on interfaith marriage between a Muslim woman and a *Kitābī* man. The *fuqahā'* and *mufassirūn* dealt differently with the type and scope of influence and authority a husband had over his wife, and the divergent textual evidence used to support the prohibition. This highlights again the inherent ambiguity of the text and the possibility of alternative readings.

In the *Mudawwana*,¹³² a tradition was transmitted that Sa'īd bin Musayyib (d.94/715), a prominent Muslim *faqīh* who headed *al-hadith* school established in Hijāz particularly in Medinah and one of the *tābi'ūn* (generation succeeding the companions/*sahāba*), said: "Do not marry the polytheist to a believer even if she were an adulteress."¹³³ In Mālik's *Mudawwana* a tradition is mentioned "from Sufyān Al- Thawrī from Yazīd ibn Abī Ziya, who heard from Zaid bin Wahba Juhtānī that he said that Omar bin al-Khattāb wrote: The Muslim man marries a Christian woman whereas a Christian man does not marry a

¹³²*Al Mudawwana al- Kubra* is a collection of Imam Mālik Ibn 'Anas' (d.179/ 795) views on jurisprudential matters that Ibn Al-Qāsim (d.191/806) attributed to Imam Mālik and then reached Sahnun Al-Tanukhī (d.240/855) who compiled and arranged this foundational text and Compendium of Maliki jurisprudence in 9th century.

¹³³MĀLIK IBN ANAS, 2 AL-MUDAWWANAH AL-KUBRÁ211-8 (Dār al-kutub al 'ilmiyya 1994).

Muslim woman.”¹³⁴ Yazīd bin ‘Iyād also reported that he heard from Ali ibn Abī Tālib who said: The Jewish and Christian man do not marry a Muslim woman,” and from Rubay’a that he said: “It is not permissible for a Christian man to marry a free Muslim woman.”¹³⁵ Mālik also said “Do not you see that the Muslim woman may not be married [*la yankihuhā*] to a *Kitābī* and in the case where a Christian [*nasrāniyya*] wife under [the authority of, *tahta*] a Christian [*nasrānī*] husband converts to Islam, the husband would still have her [*amlakubihā*] until the end of her *‘idda* [waiting period].¹³⁶ Nevertheless if a Christian [*nasrāni*] initiated a marriage [*nikāh*] with a Muslim woman, the marriage is null and void.”¹³⁷ In his work, Mālik also points that a marriage between a Muslim man and a Scriptural woman is permissible though frowned upon (*makruh*).¹³⁸ Concerns thus existed regarding the influence that a non-Muslim wife could have on her Muslim husband and children. Malik justified his dislike for a Muslim’s marriage to a Scriptural woman stating that she “eats pork and drinks wine; he copulates with her and kisses her, while this is in her mouth; she bears him children, feeds them according to her religion, gives them forbidden food to eat and wine to drink.”¹³⁹

In his seminal and formative work *al-‘Umm*, al-Shāfi‘ī (d. 204/820) also raises the questions of whether the *mushrikīn* prohibited to Muslims in Q. 2:221 include *Ahl al-kitāb* or not. He cites the opinions of both the proponents and the opponents. Then he asserts that if the verse had been revealed to prohibit the marriage of Muslim women only to those *mushrikīn* who are idolaters, “Muslim women are also prohibited to the *mushrikīn* of *Ahl al-kitāb*.”¹⁴⁰ This al-Shāfi‘ī says is because Allah has prohibited guardianship (*wilāyah*) between Muslims and *Mushrikīn*.¹⁴¹

¹³⁴*Id.* at 212.

¹³⁵*Id.*

¹³⁶*Id.* at 213.

¹³⁷*Id.* at 212.

¹³⁸ ‘ABD AL-RAHMĀN AL-JAZIRĪ, 4 AL-FIQH ‘ALA AL-MADHĀHIB AL-‘ARBA‘A 72-4 (Dār al-kutub al-‘ilmiyya 2003).

¹³⁹*Al-Mudawwana* cited in YOHANAN FRIEDMANN, TOLERANCE AND COERCION IN ISLAM 182 (Cambridge University Press 2003).

¹⁴⁰MUḤAMMAD IBN IDRĪS AL-SHĀFI‘Ī, 5 KITĀB AL-‘UMM 7 (Dār al-ma‘rifah 1990).

¹⁴¹*Id.*,

Jurisprudents need to add religious legitimacy to the solutions they have chosen and the rulings they have extrapolated from a specific historical context. It is this task that pushed them to search for prophetic sayings (*'ahādith*) that addressed the issue of marriage whether as a contract or a practice. This need also pushed them to explore the lives and works of their predecessors for foundations on which to build their own rulings. These jurisprudents have made it an objective to tie every ruling with similar evidence from the Qur'an and Sunna. Of these *'ahādith* was that of which Tabarī was the only narrator saying: “From Al-Hassan, from Jabir Ibn ‘Abdallah, he said: The Prophet (PBUH) said: “We may marry a woman from the People of the Book but they may not marry Muslim women.”” Al-Tabarī commented on this hadith saying: "This hadith and with what disagreement there is regarding its *'isnād*, is yet accepted given the general consensus/*'ijmā'* of the *'ummah* on its reliability".¹⁴²

The part of the verse in which Muslim women are also instructed not to marry *mushrikīn* according to al-Tabarī is read by one of the followers of *al tābi 'ūn* as being directed to their guardians. Al-Tabarī states that the part of the verse Q 2:221 “*wa la tankihu al mushrikāt*” is a divine command for men not to marry polytheist women and the statement “*wa la tankihu al mushrikīn*” from the same verse is also a statement for men to preserve their honor by not marrying off their daughters to *mushrikīn*. Tabarī evokes an opinion from Ja‘far Mohamed bin ‘Ali that states that the latter part of the verse is further textual evidence of *wilāyah*.” Al-Tabarī clearly states his position in his *tafsīr* that Q. 5:5 does not abrogate Q. 2:221 because the latter originally addressed the polytheists of Arabia. This technically means that the Qur’an is silent on the matter though al-Tabarī does not mention it explicitly; instead he cites two prophetic traditions one of which there is disagreement over its *'isnad* to bring in textual evidence for the prohibition of an interfaith marriage between a Muslim woman and a *Kitābī* man.¹⁴³ In his *Ahkam al-Qur’an*, al-Qurtubī states: “do not marry the Muslim women to the *mushrik*, and the

¹⁴² MUHAMMAD IBN JARİR AL-TABARĪ, 4 TAFSIR AL-TABARĪ: JĀMI‘ AL-BAYĀN FĪ TA’WĪL AL-QUR’AN 367 (Mu’asast al-Risālah 1999).

¹⁴³ *Id.* at 370.

Ummah had unanimously agreed that a *mushrik* is not to marry a Muslim woman at all for what disparagement such an act would have on Islam.”¹⁴⁴

On the prohibition of an interfaith marriage between a Muslim woman and a *Kitābī*, Al-Māturīdī’s (d.333/944) work offers some of the earliest reflections on the prohibition. Al-Māturīdī’s states that “Unbelievers do (but) beckon you to the Fire, and the women do not preach their husbands, but preaching is originally for husbands, and they are the rulers (*‘umara’ ‘ala azwājihinna*) over their wives and women are among the followers and humiliated in their hands therefore it was permissible for Muslim men to enter an interfaith marriage with a *Kitābiyyah*.”¹⁴⁵ In his work, al-Khallāl (d.311/923) mentions that Ibn Hanbal also rejects the continuation of a marriage where a *Kitābiyyah* embraces Islam, justifying this by stating that “we can own them but they cannot own us [*namlikuhum walā yamlikūna*].”¹⁴⁶

Ibn Hazm (d.456/1046) has also devoted his effort to collect the *‘ahādith* that have been transmitted by the narrators about the *sīrah* of ‘umar Ibn Al Khattāb, who was known for his strict stance on the marriage of Muslims with non-Muslims generally and his insistence on the separation between married couples once the woman converted to Islam. Concerning revoking the marital contract of a woman whose husband has apostatized, Ibn Hazm states: "From ‘Umar as well, a third saying that we have narrated through Hammād Ibn Salamah through Dawud At-Tai’i, through Ziyād Ibn Abd al-Rahman that Hanzalah Ibn Beshr married his daughter when she was a Muslim to a Christian nephew of his – to this Auf Ibn al-Qa‘qa‘ rode to ‘Umar Ibn al-Khattāb and told him of such, to this ‘Umar wrote : If he converts then she is his wife (*‘imrā’atuhu*) and if he does not then they are to be separated. And he, the husband, did not, so they were separated.”¹⁴⁷ He also wrote on an interfaith marriage between a Muslim woman and a *Kitābī* that it was prohibited and added in the same sentence “and also prohibited is the ownership of a Master who is an

¹⁴⁴MUḤAMMAD IBN AḤMAD QURTUBĪ, 3 TAFSĪR AL-QURTUBĪ: AL-JĀMI‘ LI-AḤKĀM AL-QUR’ĀN 72 (Dār al-kutub al misriyya 1964).

¹⁴⁵ABI MANSŪR MUḤAMMAD IBN MUḤAMMAD AL-MĀTURĪDĪ, 2 TA’WĪLĀT AHL AL-SUNNAH 124 (Dar al-kutub al ‘ilmiyya 2005).

¹⁴⁶ABŪ BAKR AL-KHALLĀL, 1 AḤKAM AHL AL MILAL 184 (Dār al-kutub al ‘ilmiyya 1994).

¹⁴⁷ALĪ IBN AḤMAD IBN ḤAZM 5 AL-MUHALLĀ 371 (Dār al-fikr).

unbeliever (*kāfir*) of Muslim slave.”¹⁴⁸ He cites both Q. 2:221 and the verse Q. 4:441 which states: “And never will Allah grant to the Unbelievers a way (to triumph) over the Believers.”¹⁴⁹ He goes on to cite traditions regarding how slaves who were once owned by unbelievers were freed as soon as they converted to Islam. This shows that Ibn Hazm did not simply analogize between husband and master and wife and slave to make the prohibition comprehensible. Rather, Ibn Hazm took a further step by using these traditions as complementary textual evidence to confirm why Muslim women cannot marry any non-Muslim: He cites a tradition from Yazīd ibn ‘Alqamah, that ‘Ubadah ibn al-Nou‘mān al-Teghlībī married a woman of Banī Tamīm and she converted to Islam, and to this ‘Umar said to him: Either you convert to Islam or we take her away from you (*nantazi ‘uha mink*), and he refused so ‘Umar took her away from him... Ibn Hazm cites another tradition as supporting textual evidence: “through Hammād ibn Zaid ibn ‘Ayyūb al-Sikhtiyānī from ‘Ikrimah from Ibn ‘Abbas that he said that if the Jewish, or the Christian woman converts to Islam under the Jew or the Christian: They are to be separated: Islam supersedes and cannot be superseded. And with this Hammād Ibn Zayd gives a fatwa: “from Abd al-Razek from Abū az-Zubayr that he heard Jabir ibn Abd Allah saying: The woman of the people of the book are allowed for us (to marry) and our woman are forbidden for them (to marry).”¹⁵⁰

In his authoritative work *fatāwa*, in the chapter “*nikāh al-kufār*,” Ibn-Taymīyah (d.728/1328) who rejects the *taqlīd*-hermeneutic, makes a clear analogy between *nikāh* and *riqq*. Ibn-Taymīyah says that “marriage is only a form of enslavement while concubinage is all enslavement.” He states that enslavement is a *‘illah* for concubinage, and so it is *kufar* (whether the master is polytheist or from *Ahl al-kitāb*) that can act as impediment to owning a Muslim slave whether male or female, but in marriage it is the element of enslavement that can act as an impediment to a marriage between a Muslim and a non-Muslim (provided that the person is from *Ahl al-kitāb*).¹⁵¹ It is the aspect of enslavement in the marital relationship further embedded in Islamic tradition by the

¹⁴⁸ ALĪ IBN AḤMAD IBN ḤAZM, 9 AL-MUḤALLĀ 19 (Dār al-fikr).

¹⁴⁹ Q. 4:441.

¹⁵⁰ IBN HAZM, *supra* note 147.

¹⁵¹ AḤMAD IBN ‘ABD AL-ḤALĪM IBN TAYMĪYAH, 3 AL-FATĀWĀ AL KUBRĀ 105-7 (Dār al-kutub al ‘ilmiyya 1987).

reading of other verses that helps stabilize the consensus on the prohibition of marriages between Muslim women and non-Muslim men.

In his jurisprudential work *Ahḳām ahl al-dhimmah* which deals with the laws governing Christian, Jewish, and Sabeian subjects of the Muslim state, 14th century Hanbali jurist and scholar, Shams El Dīn Ibn al-Qayyim (d.751/1350), states that "it is not permissible for a Zoroastrian or a pagan man to override a woman whose religion is better than his; a dhimmi man too cannot marry (*yankih*) a Muslim woman."¹⁵² Ibn Kathīr, a close student of Ibn al-Qayyim, has included in some of his works biographical details on the latter. A disciple of Ibn Taymiyyah (d.728/1328), Ibn al-Qayyim was deeply intertwined with the religious polemics that the former had with his rivals. Ibn Taymīyah's literalist and formalistic approach primarily counted on the precepts and the exact wording of the Qur'an and the hadith tradition with regards to the Prophet and his Companions. With regards to the currently established rule demanding that marriages between two disbelievers be annulled if the wife converts to Islam, a variety of opinions exist. Ibn al-Qayyim mentions a period in the development of Sharī'ah before God commanded *jihad* where, when the wife converted to Islam in her marriage with a disbeliever, the marriage was not annulled. He mentions an incident where 'Umar ibn al Khattāb handled the case of two married Christian spouses where the wife converted to Islam. 'Umar gave the woman the option of either leaving or staying with her husband. Ibn al-Qayyim elaborates on "staying" stating that it does not indicate "that she remains under him while he is Christian, yet she can wait until he converts to Islam, and whenever he does, then she is his wife, even if the situation does not change for years." This is also the opinion of Ibn Taymīyah. She thus, is not permitted to resume conjugal relations with her husband, yet if she chooses to stay in her husband's home she is entitled to support (*al-nafaqa wa al-sukna*). Another tradition related to the authority of Ibn Abbas states that "God sent Muhammad with the truth to make it prevail over all religion(s). Our religion is the best of religions and our faith stands above all others. Our men are above their women, but their men are not be above our women."¹⁵³ The fact that opinions existed allowing a

¹⁵²MUḤAMMAD IBN ABĪ BAKR IBN QAYYIM AL-JAWZĪYAH, 2AḤḲĀM AHL AL-DHIMMA785 (Ramādī, 1997).

¹⁵³ALĪ AL-BAYHAQĪ, 7 KITĀB AL-SUNAN AL-KUBRĀ 280 (Dār al-kutub al 'ilmiyya 2003).

woman to stay with her non-Muslim husband and receive *nafaqa* can lead to arguing that the proponents of this position depicted the element of enslavement in the conjugal relation itself and in the husband's *wilāyah* to restrict his wife's mobility for this purpose. However, other opinions suggest that the prohibition holds due to man's authority in marriage and the result of which can lead to the wife's conversion

5. *Kufr*, *Shirk*, and *Ahl al-kitāb* in IFM Regulations:

The *fuqahā'* and *mufasssīrūn* dealt differently with issues such as what constitutes *kufr* or *shirk* and how to categorize *Ahl al-kitāb*. The understanding of these concepts is firmly connected to how interfaith marriages are regulated in Islamic legal discourse. In his *Lisān al-'Arab*, Ibn-Manzūr states several meanings of the word *kufr*. He says that the word is used to describe people of *dār al-harb*, a concept used to refer to territory where Islamic law is not in force.¹⁵⁴ This is because "they disobeyed and abstained from God."¹⁵⁵ He also states that *kufr* is the denial of grace and thus is the antithesis of gratitude. The word was also used to refer to the act of concealing something so as to destroy it (*takfīr*).¹⁵⁶ Later when God's grace came to be reflected in Islam, the word was tied with the act of denying God's grace. A *kāfir*, thus, was seen as a person "who received God's benevolence, [but] shows no sign of gratitude in his conduct, or even acts rebelliously against his benefactor."¹⁵⁷ In discussing the meaning of *kufr* as denial of dogma, Farid Esack argues that the Qur'an always links *kufr* to doctrine within "a real socio-historical context... that [for example] denying God is connected to breaking promises and spreading corruption (2:28) and denying the resurrection [is connected to] the refusal to spend part of their [unbelievers] wealth on the poor (41:7). Esack also illustrates that the term *kufr* was used in several occasions in the Qur'an (Q. 2:146, Q. 6:20, Q. 2:42, 159, and 147) to describe a person "who has actually recognized the unity of God and Muhammad as his prophet, but who, nevertheless, willfully refuses to

¹⁵⁴MUHAMMAD IBN MANZŪR, 13 LISĀN AL-'ARAB85 (Dār Sādir: Dār Bayrūt 2003).

¹⁵⁵*Id.*

¹⁵⁶*Id.*

¹⁵⁷TOSHIHIKO IZUTSU, ETHICO-RELIGIOUS CONCEPTS IN THE QUR'AN 120 (McGill University Press 1966). In examining Pre-Islamic literature, Izutsu provides that main semantic constitute of the word *kufr* is ingratitude rather than disbelief.

acknowledge it.” A third understanding of *kufr* that is denounced by the Qur’an comes in the form of antagonism towards Islam and Muslims. Esack marks a distinction between this and mere “disagreement with reified, particularly contemporary, Islam or opposing socio-religious communities known as Muslims.”¹⁵⁸ Finally, Esack highlights the Qur’an’s specificity with regards to the choice of the *kufār* to refrain from confessing belief. Believing in Islam entailed a radical change in values, personal life, and socio-economic relations rather than just a mental shift to another set of ideas. The Qur’an, thus, states that they opted for *kufr* “because of narrow material gains (21:53; 26:74; 31:21), tribal bonds (43:22) and because Islam would disturb the unjust social order (3:21).”¹⁵⁹

This discussion of the concept of *kufr* is important and relevant to interfaith marriage regulations since *kufr* in classical *tafsīr* literature was seen to characterize “all those who by choice or accident of birth belong to or identify with that community irrespective of the differences that may separate its diverse components.”¹⁶⁰ In examining how the concept of *kufr* is used in classical *tafsīr* of Q. 3:21, *mufasssīrūn* including ‘Ibn ‘Arabī, al-Razī, and al-Zamakhsharī are seen to be imprisoning the religious other in collective guilt. This is not the case in classical modernist modernist’s *tafsīr*, Rashīd Ridā.¹⁶¹ Q. 3:21 states: “As to those who deny the Signs of Allah, and in defiance of right, slay the prophets, and slay those who teach just dealing with mankind, announce to them a grievous penalty”.¹⁶² This text is seen to refer to a time when the Jews supposedly slew prophets who were sent to them. The verse however, in classical *tafsīr* literature, is seen to apply to all Jews as a community even if it were their predecessors who were responsible for these acts.¹⁶³

On *mushrikīn* and whether *Ahl al-kitāb* are included in the prohibition in Q. 2:221, Muqātil in his *tafsīr* defines a believing slave as one who believes in the

¹⁵⁸ESACK *supra* note 30, at 139.

¹⁵⁹*Id.*

¹⁶⁰*Id.* at 142.

¹⁶¹*Id.* at 141.

¹⁶²Quran 3:21, *translated in* ‘Abdullah Yusuf Ali, *supra* note 2, *available at* http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_3_al_imran/0.

¹⁶³ESACK, *supra* note 30, at 142-3.

oneness of God (*musadiq bi tawhīd 'Allah*).¹⁶⁴ He re-emphasizes his point in his reading of Q. 5:5. In his *tafsīr* of the verse Q. 2:221, al-Zajjāj (d.311/923) defines a *mushrik* as one “who disbelieves in the prophet and who disbelieves in the prophet is in turn denying that the Qur’an that was revealed to the Prophet is from God and thus claims that another but God came with what comes only from God.” This is where association of others with God (*'ishrāk bi Allah*) occurs. Thus, he considers *Kitābiyān* to also be *mushrikīn*.¹⁶⁵

Abu Bakr al-Kāsānī, (d. 587/1191), the later Hanafi *faqīh* who wrote *Badā'ī' al-ṣanā'ī' fī tartīb al-sharā'ī'*, one of the best compilations in Hanafi fiqh, stated regarding interfaith marriages between Muslim men and non-Muslim women, that it was impermissible for a Muslim to marry a disbeliever (*kāfīra*) according to the verse 2:221. However a Muslim man is allowed to marry a *Kitābiyyah* woman according to Q.5:5. Al-Kāsānī uses the word *kāfīra* which is more general than the word *mushrik* used in Q. 2:221. Many *fuqahā'* use both words interchangeably, nevertheless *kufr* constitutes disbelieving what constitutes part of faith, while *shirk* refers specifically to associating in faith with God idols and other creatures. He argues that interfaith marriage between Muslims and the latter category of disbelievers would cause a religious enmity between spouses and thus defeat the purpose of marriage in finding tranquility in the other spouse and achieving harmony, affection, and mercy between them.¹⁶⁶

On the other hand, al-Kāsānī states that a *Kitābiyyah* believes in books and messages of prophets and apostles in whole; this faith however is rescinded as a faith that is not yet complete. Complete faith can still be achieved by those who already base their faith on evidence rather than personal inclinations. And so in marrying a *Kitābiyyah*, a Muslim man plays a role in "alert[ing] her to the facts of the matter," presenting Islam to her, offering her thus a chance to embrace the religion, a ramification that al-Kāsānī believes

¹⁶⁴IBN SULAYMĀN, *supra* note 2, at 191.

¹⁶⁵ABĪ ISHĀQ IBRĀHĪM IBN AL-SARĪAL-ZAJJĀJ, 1 MA'ĀNĪ AL-QUR'ĀN WA-I'RĀBUH295 ('ālam al kutub 1998).

¹⁶⁶ABŪ BAKR IBN MAS'ŪD KĀSĀNĪ, 2 BADĀ'Ī' AL-ṢANĀ'Ī' FĪ TARTĪB AL-SHARĀ'Ī' 270 (Dār al-kutub al 'ilmiyya 1986).

is a decent and worthy justification for the permissibility of these interfaith unions.¹⁶⁷ In other words, al-Kāsānī believes that this justification would not exist in an interfaith marriage with a polytheist woman whose choice to remain so indicates her forfeiture of existing evidence and thus would not consider it if presented to her.

He outlines Imam Shāfi'ī's consideration of a *Kitābiyyah* as a polytheist since *Ahl al-kitāb* too associate in faith with God other entities.¹⁶⁸ Al-Shāfi'ī presents the verses from the Qur'an which explicitly mention this; "The Jews say, "Ezra is the son of Allah "; and the Christians say, "The Messiah is the son of Allah." That is their statement from their mouths; they imitate the saying of those who disbelieved [before them],"¹⁶⁹ and "They have certainly disbelieved who say, "Allah is the third of three." And there is no god except one God."¹⁷⁰

He follows with the conclusion that *Ahl al-kitāb* were included in the general statement made on polytheists in Q. 2:221. And that Q.5:5 constitutes engaging with particularization of a general statement making interfaith marriages between Muslim men and free *Kitābiyyāt* permissible (that is to say that interfaith marriages between Muslim men and *Kitābiyyāt* slaves fell under the genre meant in the general statement and was thus prohibited).¹⁷¹ Nevertheless, Imam Al-Kasani states that even if *Ahl al-kitāb* as a matter of fact are polytheists, both groups were addressed separately in the text of the Qur'an; "Neither those who disbelieve from the People of the Scripture nor the polytheists wish that any good should be sent down to you from your Lord,"¹⁷² and "[...] they who disbelieved among the People of the Scripture and the polytheists"¹⁷³

¹⁶⁷*Id.*

¹⁶⁸*Id.* at 271.

¹⁶⁹Qur'an 9:30 translated in 'Abdullah Yusuf Ali, *supra* note 2, available at http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_9_repentance/0.

¹⁷⁰Qur'an 5:73 translated in *id.* available at

http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_5_the_table_spread/0.

¹⁷¹KASANI, *supra* note 166, at 271.

¹⁷²Qur'an 2:105 translated in 'Abdullah Yusuf Ali *supra* note 1.

¹⁷³Qur'an 98:6 translated in *id.* available at

http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_98_the_clear_evidence/0.

Al- Kāsānī uses the same verse which he states as not encompassing *Ahl al-kitāb* to support the asymmetric prohibition of a marriage between a Muslim woman and a non-Muslim man Q. 2:221: "And do not marry polytheistic men [to your women] until they believe." He justifies this by explaining that even though Q. 2:221 refers specifically to polytheists, yet the cause (*'illah*) behind the prohibition, which is that "Those invite [you] to the Fire," includes all disbelievers, thus the prohibition is generalized to include even *Ahl al-kitāb*.¹⁷⁴ He argues that since there is fear, that in the marriage of a Muslim woman to a non-Muslim man, the Muslim woman would fall into disbelief since the non-Muslim man invites her to his religion, and with regards to habits or customs women usually follow men's inclinations towards certain actions, and emulate/ imitate them in their religion. They invite Muslim women to disbelief and the invitation to disbelief is an invitation to the Fire and since disbelief substantiates fire, then the marriage of a non-Muslim man to a Muslim woman was deemed a reason leading to the forbidden and so became forbidden [in itself].

Thus, it is not permissible to marry a Muslim woman to one of the people of the book, nor is it permissible to marry her to a Pagan or a Zoroastrian since God's commands/ prescriptions has prevented the guardianship (*wilāyah*) of disbelievers over believers with Almighty's saying: "And never will Allah grant to the unbelievers a way (to triumphs) over the believers."¹⁷⁵ And so had the marriage of a non-Muslim man to a Muslim woman been permissible he would be seen as having "a way (to triumph) over" her and that is not permitted.

Here, al-Kāsānī has used analogy (*qiyās*) where a common *'illah* has been identified between the original case (impermissibility of marriages between Muslim women and Polytheist men) and the new case (marriages between Muslim women and Scriptural men). Once identified, the same ruling is applied without any interference or change. In order for a jurist to carry out the exercise of analogy as with the case above, there are three requirements: the original case which analogy seeks to extend to a new situation,

¹⁷⁴KASANI, *supra* note 166, at 271.

¹⁷⁵*Id.*

the new case on which a ruling is needed, the *'illah* which is a constant attribute of the original case, and the ruling governing the original case which is to be extended to the new case.¹⁷⁶ In order to constitute a basis for the analogical deduction, the ruling to be extended must be rational.¹⁷⁷ According to the majority of the *'ulama*', *'illah* is “a constant attribute which is applicable to all cases without being affected by differences of persons, time, place and circumstances.”¹⁷⁸ In doing so, the majority of the *'ulama*' establish a difference between the effective cause of the ruling (*'illah*) and the objective of the ruling (*hikmah*) itself. Other jurists from the Maliki and Hanbali madhāhib stated otherwise, indicating that it is enough if the *'illah* has a “reasonable relationship” to the ruling.¹⁷⁹ The question here arises whether the gendered understanding of the part of Q. 2:221 that reads “Unbelievers do (but) beckon you to the Fire” constitutes sufficient *'illah* for prohibiting Muslim women from marrying *Kitābī* men. Can this section of the verse with all the variety of tradition and the different criteria upon which they are chosen and interpreted constitute a basis for consensus? Is it even possible to discern *'ijmā'* of the jurists in the first two Islamic centuries on the principle of prohibiting Muslim women to marry *Kitābī* men? And if so when exactly did this consensus occur and does it fulfill the criteria of what we now know as *'ijmā'*?

The next section shows how the interpretations of prominent figures such as the early reformist Muhammad 'Abduh and neo-traditionalist Sayyid Qutb marked the introduction of “the modernist development adding the ideology of domesticity and the scientific justification of biological essentialism through the use of the notion women’s *fitrah* – their inborn nature.”¹⁸⁰ The section then briefly outlines alternative interpretive strategies used in contemporary feminist *tafsīr* works and their application so as produce a more egalitarian reading of the textual sources when it comes to man’s authority and role and

¹⁷⁶HALLAQ, *supra* note 20, at 100-102.

¹⁷⁷For example, ritual religious performances (*'ibādāt*) cannot constitute a basis for analogy as their *'illah* cannot be ascertained by the human intellect. Abu Hanīfah maintains that causes can be ascertained from Qur’anic text except in cases of *'ibādāt*. One of his disciples ‘Uthman al-Bāṭī that these causes can only be ascertained from the text if there is an actual indication in the text of the *'illah*.

¹⁷⁸MOHAMED HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 274 (The Islamic Texts Society 2003).

¹⁷⁹*Id.*

¹⁸⁰ Abou Bakr, *supra* note 34, at 98.

status of woman in marriage. A few works examine how the understanding of what constitutes disbeliever (the other) is constructed.

III. *Qiwwāmah*, *Shirk*, *Kufr*, and *Ahl al-kitāb* in IFM Regulations: A Contemporary Approach:

This chapter is divided into two main sections. The first section provides a historical overview of the modern shifts in interpretive authority and the resultant emergence of revivalist-modernist movements. It then surveys some of *tafsīr* works of prominent figures namely Muhammad ‘Abduh, prominent figure of the classical modernist movement and Sayyid Qutb who was committed to the neo-traditionalist movement. Though influenced by classical modernists, neo-traditionalists took a more conservative turn by dismissing intellectualism as dangerous and considered classical modernists to be westernized. They also had a much stronger link to pre-modern revivalist movement of the 18th century particularly Wahhabism. Despite that, neo-traditionalists had a more critical stance towards hadith literature. The second section of this chapter then looks at contemporary interpretations of Q. 4:34 and the concepts of *kufr*, *mushrik*, and *Ahl al-kitāb*.

A. Transformation of Islamic Tradition in the Contemporary Era: 18th Century to the Present

The Islamic modernist movement emerged in the late nineteenth and early twentieth centuries to establish “synthesis between modern values and systems on one hand, and what were seen to be eternal Islamic values and systems on the other.”¹⁸¹ The urgent project of the modernist movement to synchronize Islam with values such as rationality, science, and democracy came as a result of colonialism and interaction with the Western world. This led to the reemergence of the rational religious sciences of Islam, the *kalām* science.¹⁸² Among the most prominent modernist and early reformist figures were Jamal

¹⁸¹SuhaTaji-Farouki, *Introduction*, in MODERN MUSLIM INTELLECTUALS AND THE QUR’AN 3 (Taji-Farouki ed., Oxford University Press 2006).

¹⁸²*‘Ilm al-kalām* can be defined as “*‘Ilm al-kalām* is the discipline which brings to the service of religious beliefs (*‘akā’id*) discursive arguments; which thus provides a place for reflexion and meditation, and hence for reason, in the elucidation and defense of the content of the faith.” See L. Gardet, *‘Ilm al-Kalām. Encyclopaedia of Islam. Brill Online* (2012), available at http://www.brillonline.nl.library.aucegypt.edu:2048/entries/encyclopaedia-of-islam-2/ilm-al-kalam-COM_0366.

al-Afghani (d.1314/1897), Sayyid Ahmed Khan (d.1315/1898), Mohamed ‘Abduh (d.1323/1905), and Rashīd Ridā (d 1353/ 1935) and Tunisian thinker and reformer al-Tahir al-Haddad (d.1353/1935). Mohamed ‘Abduh in particular called for a rational interpretation of the Qur’an and emphasized that science is necessary to understand the Qur’an; any seeming contradiction between scientific reason and the scripture is a result of human misreading and could be resolved by reading the text allegorically.¹⁸³ By adhering to the Salafi mindset, classical modernists believed in the revivification of the ‘true’ teachings of the Qur’an and Sunna. This revivalism was similarly attained through the adoption of Ijtihad and the rejection of *taqlīd*, though the scope and content of the modernists’ *Ijtihad* was broader than that of the pre-modern revivalists who adopted the methodology of the traditionist movement (*ahl al-hadith*). The former also were less reliant on the hadith literature. Rashīd Ridā for instance considered the only legitimate source of Sunna to be the practice based. Furthermore, classical modernists also differed from their predecessors in their desire to engage with modernity rather than alienating themselves. Historical context was also important in Qur’anic interpretation for classical modernists, it was particularly relevant when “the Qur’an used figurative language that conveyed meanings distinct to the immediate audience of its revelation in Seventh-century Arabia.” Even though Classical modernists displayed a degree of skepticism to historicity of hadith, their criticism continued to operate with the classical system of hadith sciences. The classical modernist movement lacked thus a systematic embedded methodology and philosophy based on which reform of the Islamic tradition can take place in a holistic rather than a selective manner. In his Qur’anic commentary, ‘Abduh left out “theological speculations, the detailed grammatical discussions, and the obtuse scholarship which characterized the commentaries of the past.” His aim was to make comprehensible for all Muslims the moral aim of the text. The technical aspects of *tafsīr* were thus not emphasized in making meaning of the verses. Later moderate writings of Muhammad Al-Ghazalī and Yusuf Qaradawī also exhibited a methodological affiliation with classical modernists.

¹⁸³AYSHA A. HIDAYATULLAH, *FEMINIST EDGES OF THE QUR’AN 29* (Oxford University Press 2014).

The neo-traditionalist Islamist discourse on gender equality and women's rights introduces modern constructs that "attempt to remain traditional, while adopting specifically modern components."¹⁸⁴ Modern elements incorporated in the revivalist approach of Islamists create new understandings that are neither traditional nor completely liberal. The modern components can be traced in the gender discourse of an important number of Egyptian Islamists such as Hassan al-Bannā (d.1368/1949), Sayyid Qutb (d.1385/1966). The neo-traditionalist movement though much influenced by the early modern reformist movement, nevertheless its proponents considered the latter to be too Western. In part they adhered to the essence and methodology of the early reformers yet they considered intellectualism to be a threat as one of their main objectives was to distinguishing the religious tradition from the West. In some sense, the neo-traditionalist movement was drew from eighteenth century Wahhabi thought in that its proponents also promoted the revivalist approach of following *as-salaf* and denouncing *taqlīd*. Nevertheless, they had a more skeptical approach to hadith than Wahhabis. Writings of the Islamist figures Yusuf al-Qaradawī and Heba Raouf Ezzat are shown to have their roots in the writings of earlier Islamists such as al-Bannā and his disciple Qutb. The Islamist movement of the Muslim Brotherhood encouraged Muslim women to struggle, alongside men, for the Islamic call (*da'wwah*). Women played a role in the social sphere and in the political sphere for the Islamic cause so long as this did not affect their domestic role. Nevertheless, Al-Bannā stated that "destroying the integrity of the family and threatening the happiness of the home" was one of the social causes of the dissolution of the Islamic state. The Islamist movement developed "its own distinctive gender discourses, a mixture of traditional religious conservative ideas, alongside modern ones, producing a new hybrid, neo-traditional gender discourse compatible with its 'restorative' ideological project."

In his Qur'anic commentary *Tafsīr al manār*, Muhammad 'Abduh, the Egyptian intellectual and author of the treatise *Risālat al-tawhīd*, argues in his *tafsīr* of *qiwwāmah*

¹⁸⁴Roxanne Marcotte, *Egyptian Islamists and the Status of Muslim Women* (2005), available at http://www.jsri.ro/old/html%20version/index/no_11/roxannedmarcotte-articol.htm.

verse that God has bestowed upon men strength and power that were not granted to women, and it is because of this that there are variations in the responsibilities and legal rulings (*'ahkam*) between men and women due to the variation in their humanly disposition and readiness.¹⁸⁵ He begins his commentary on the verse with a reminder “And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of his bounty. Indeed Allah is ever, of all things, knowing.”¹⁸⁶ He argues that it is because of their procreation men are entitled with the maintenance, protection and care of women.¹⁸⁷ Consequently, they are instructed to undertake *jihad* so as to provide protection, they receive a greater share of inheritance because they spend on their households. He reasons that Shari’a has honored women since they are granted a dowry as compensation for their natural state.¹⁸⁸ This means that not only do men exceed women in strength and power by which Allah has made them surpass women, but they also exceed them materially with what they provide as compensation for this original variation that will inevitably lead to a hierarchical relationship between the two spouses. This monetary compensation is meant to satisfy the woman who in ‘Abduh’s words “voluntarily consents to forgo absolute/formal equality with the man” in matrimony.¹⁸⁹ This is because according to ‘Abduh a woman’s disposition would not necessitate that she accept male authority over her without any kind of compensation.¹⁹⁰

He further deconstructs this concept of *qiwwāmah* by reasoning that a hierarchical relationship where the woman is subordinate does not mean that she acts according to the will of the husband or simply does what he directs her to do. He emphasizes her autonomous character as a person with will and choice. Abduh interprets *qiwwāmah* as husband’s guidance and oversight in the wife’s implementation of her duties, observing her in her work and in upbringing the children.¹⁹¹ He names some of the wife’s duties which include: keeping the house, and not separating from her husband even to visit her

¹⁸⁵MUHAMMAD ‘ABDUH, 5 TAFSIR AL-MANĀR 55 (al-hay’ah al masriyya al-‘āmmah li al-kitāb 1990).

¹⁸⁶*Id.*

¹⁸⁷*Id.*

¹⁸⁸*Id.* at 56.

¹⁸⁹*Id.*

¹⁹⁰*Id.*

¹⁹¹*Id.* at 57.

family unless her husband expressly consents and authorizes this parting. Maintenance is also determined by the man in accordance with his abilities. He emphasizes that the *'illah* behind *qiwwāmah* is not that men have been chosen by God to be prophets or imams, and that even if God has chosen women to occupy the position of imam or caliph, they would still have to be subject to the husband's *qiwwāmah* because of their *fitrah*. 'Abduh makes it clear that prophet hood cannot be determined by making a judgment that men are better than women, nor for 'Abduh is the fact that men occupy these positions a valid assumption of God's preference to men over women. He interprets the God has created man "with more powerful, impeccable, and appealing temperaments" and it's because of these preferences that they are more capable of *qiwwāmah*.¹⁹²

He reiterates that the expression "bima faddal Allah ba'aduhum 'ala ba'ad" refers to men over women. He acknowledges that this meaning could have been more obvious (*zāhir*)¹⁹³ if the verse said "bima faddallahum 'ala ba'adihinna," but he assures that there is a rationale (*hikmah*) behind this subtlety. The expression "ba'aduhum 'ala ba'ad" is as 'Abduh reads it a statement from God indicating that men are from women, and women from men. They're both parts of the body of one person; the husband should not arbitrarily exercise *qiwwāmah* over his wife, and she in turn should not feel hampered by what he exceeds in and deem it undermining to her worth and importance. The preferential designation by God that begets this hierarchical relationship he reasons is in the interest of the whole society. Another *hikmah* of this subtlety he argues in the expression "ba'aduhum 'ala ba'ad" is that God has bestowed this preferential temperaments on to the male sex but not on all male individuals over female individuals as many women exceed men in their knowledge, and ability to make a living .¹⁹⁴

In examining his understanding of *qiwwāmah*, it is clear that 'Abduh has read the verse as confining the social role of *qiwwāmah* to one sex, the male sex, even though he expressly acknowledges through the previous statement that in reality not all men necessarily put their powerful, impeccable, and appealing temperaments into optimal use for the benefit

¹⁹²*Id.* at 58.

¹⁹³*Id.* at 57.

¹⁹⁴*Id.*

of society and that women who have less powerful temperaments can and do exceed men many times. To him men being more rational does not imply that women are irrational. He even goes far as to say that even though women exceed men as with regards to their biological ability to bear children and give birth, men are not likely to wish for that which God has preferentially designated women. Women though are more likely to wish for what men exceed them in be it reason (*‘aql*), religion, strength because what men have is something common in both sexes. ‘Abduh does not assume that women cannot rule or be in authority. He has a methodical understanding of where *qiwwāmah* flows from, but does not address the consequences of not putting these already present preferences in males into use. He discusses and maintains the ideal, what he deems to be constituents of the truly interdependent and mutual relationship between man and woman in the verse but does not propose how we can implement this empirical referent. Agreeing that the temperaments in which men are preferred are already present in women as well, how would the relationship look like if say the man was more religious but the woman more influential? As we can see here, ‘Abduh unlike the traditional jurists engages in a lengthy discussion over what *qiwwāmah* means. He does not at all use the terminology of women being prisoners in their husbands’ home or the ruler/subject understanding here in rationalizing this hierarchical relationship. This however is not reflected in his discussion on Q. 2:221 on the prohibition of interfaith marriages between Muslim women and *Kitābī* men.¹⁹⁵ Initially, ‘Abduh clearly states that *Kitābiyyāt* are permissible for Muslim men but that the Qur’anic text is silent on the marriage of a *Kitābī* man with a Muslim woman.¹⁹⁶ He is satisfied with the general opinion that the rule preventing marriage of Muslim women with *Kitābī* men is based on the original prohibition of Muslims marrying idol worshippers in Q. 2:221 and derives its legitimacy from the Sunna and consensus of the jurists.¹⁹⁷ In the commentary, the possibility of an alternative reading of the situation is mentioned: “it might be said that original assumption entails permissibility (*al asl ‘ala al ‘ibāha*) and that the text was only revealed to prohibit marriage with idol worshippers in order to emphasize the offense of associating others with God.”¹⁹⁸ This opinion which

¹⁹⁵MUḤAMMAD ‘ABDUH, 2 TAFSĪR AL-MANĀR 276-82 (al-hay’ah al masriyya al-‘āmmah li al-kitāb 1990).

¹⁹⁶*Id.*, at 279.

¹⁹⁷*Id.*

¹⁹⁸*Id.*

‘Abduh also maintains provides that *Kitābiyyāt* are permissible for Muslim men in marriage as Muslims unite in faith with *Ahl al-kitāb*. The proponents of this opinion emphasize that the marriage of a Muslim man with a woman from *Ahl al-kitāb* allows the latter sect to “observe our good mannerism and the ease of our religion.”¹⁹⁹ Thus, “because the man is designated with *wilāyah* and authority over woman [*sahib al wilāyah wa al-sulta ‘ala al mar’ah*], his good treatment of his wife becomes evidence that his religion calls to the right and the straight path, and justice between Muslims and non-Muslims, and the great capacity in them of dealing with those who are different.”²⁰⁰ On the other hand, this purpose or reason is not visible in the marriage of a Muslim woman to a *Kitābī* man “because the woman is a prisoner [*‘asīrah*] to the man especially in sects in which women are not privileged with rights similar to those granted to them by Islam.”²⁰¹

In his Qur’anic commentary, *Fi Zilāl al-Qur’an*, Sayyid Qutb starts off with a brief introduction regarding the influence and importance of religion on the deep and enduring bond of marriage. Qutb writes that “a clear and common objective must exist between both parties, and what is better than religious faith to provide such affinity and unity of purpose.”²⁰² He first makes a case as to why interfaith marriages were allowed in Mecca between Muslims and idol worshippers before the divine prohibition since Muslims at the time were only able to separate themselves spiritually but not socially from the community and so the transformation needed to be gradual until they gained an independent social and political identity in Medinah. At that point in time any new marriages between Muslims and idol worshippers were prohibited. Up to the sixth Islamic century, already existing marriages continued to be valid till verses Q. 60:9 and Q. 60:10 were revealed annulling the existing interfaith marriages between Muslims and idol worshippers indefinitely. He argues that God has prohibited these marriages as they “devoid of spiritual meaning” and are only based on physical attraction.²⁰³ Qutb writes that in case conversion to Islam takes place “the barrier would be removed and the hearts

¹⁹⁹*Id.*

²⁰⁰*Id.*

²⁰¹*Id.*

²⁰²SAYYID QUTB, IN THE SHADE OF THE QURAN 295,

https://ia700803.us.archive.org/27/items/InTheShadeOfTheQuranSayyidQutb/Volume_1_surah_1-2.pdf.

²⁰³ *Id.* at 296.

of the two people concerned would fall into harmony and could be united in marriage as they are united in belief... It is the attraction of the soul that really matters.”²⁰⁴ Qutb then moves on to discuss Q. 5:5 permitting a Muslim man to marry a *Kitābiyyah*. He supports the distinction between a *Kitābiyyah* who believes in God’s oneness and a *Kitābiyyah* who believes in Trinity or that Jesus is the Lord (in the case of Christians), or that Ezra is the son of God (in the case of Jews). Nevertheless, he acknowledges that the majority of ‘ulama’ did not consider the latter category of *Kitābiyyāt* unlawful to Muslim men. Qutb then comes to reason why Muslim women are unlawful to *Kitābī* men. He begins his argument by mentioning that children take their father’s name in accordance with *Sharī’ah* and then he relies on customary practice to rationalize the prohibition stating that in “all societies” a woman following marriage joins the household of her husband “[thus] in the case of a Muslim woman marrying a Jewish or a Christian man [...] the children would be raised in a non-Muslim culture and most likely grow up to be non-Muslims.”²⁰⁵ Interestingly he also mentions that there are “practical considerations” that make it wise to discourage interfaith marriages between Muslim men and *Kitābiyyāt* despite its permissibility. He cites a tradition mentioned in *tafsīr* Ibn Kathīr by ‘umar ibn al Khattāb who was not in favor these unions as according to him it can cause Muslim men to turn away from marrying Muslim women.²⁰⁶ Qutb bases his opinion on evidence provided by “recent experience” that “such marriages undermine the faith and Muslim identity of the new generations of Islam, especially in view of the fact that our societies today are only nominally Muslim.”²⁰⁷

Displaying fragments of thought from the early classical modernists in his work, *Al-halal wa al-Haram fi al-Islam*, al-Qaradawī dismisses the ambiguities surrounding certain matters in *Shari’a*, drawing what is lawful and what is prohibited. He does this by providing an explanation and reference to the Qur’an and Sunna. Al-Qaradawī makes clear in his argument that an interfaith union can only be based on a husband’s respect for his wife’s beliefs, and that if this is not the case then a healthy relationship can never

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 297.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

develop. This explanation is based on an understanding of marriage and respect between spouses from the husband's perspective solely. It is evident that the discourse here is based on patriarchal ethos since it refutes marriage of a Muslim woman to a non-Muslim man based on her husband's likely disrespect of her belief. In accordance with al-Qaradawī's argument, the authority of the man as "master of the house," provides an opportunity for him to oppose his wife's religious practice and this authority can only be restricted by the existence of a religious rule that stipulates otherwise as in the case of Muslim men having to respect their non-Muslim partners who are people of the book.²⁰⁸ Al-Qaradawī also assumes that Islam is consistent in itself since a Muslim man is expressly prohibited to marry an idolatress woman on the grounds that his religion obliges him to acknowledge the existence of the three heavenly religions only, and hence it would be impossible for both of them to live together. However, this interpretation necessarily enforces a certain view of how non-Muslims would perceive respect for their partner's beliefs. This interpretation thus, assumes universal applicability even to non-Muslims, that respect of a husband/wife for their partner's autonomous choice of his/her religious practice is necessarily tied to the husband/wife's acknowledgement of their partner's religion.

'Abd al-Mit'āl al-Jabrī, who was a student of Hassan al-Bannā, argued instead that Q.60:10 can not possibly be abrogated by Q. 5:5 even if it were revealed after it, simply because in accordance with the *usulīs*' methods of interpretation, a ruling that is supplemented by further proof and confirming evidence cannot be abrogated.²⁰⁹ He asserts that the whole Qur'anic chapter of *Surat al-Mumtahanah* provides confirming evidence that affection should not be shown towards non-Muslims and that marriage requires such affection. Al-Jabrī thus reads the ruling in Q. 60:10 in consideration of the whole *Surah*. He asserts that only kindness and just treatment towards Muslims is required of Muslims towards non-Muslims who don't threaten them in accordance with

²⁰⁸YUSUF QARADAWĪ, THE LAWFUL AND THE PROHIBITED 179 (Al-Falah Foundation for Publication and Translation 2001).

²⁰⁹"*māqām ma'ahu dalīl al-ta'yīd wa sahibahu wathīq al-ta'kīd lā yaqa'u lahu naskh.*" 'ABD AL-MIT'ĀL AL-JABRĪ, JARĪMAT AL-ZAWĀJ BI GHAYR AL-MUSLIMĪN: FIQHĀN WA SIYĀSA 65 (1983).

Q. 60:8, but that showing affection or befriending them can compromise a Muslim's faith and practice.²¹⁰

Heba Ezzat, an Islamist figure and women's rights activist, writes that human succession (*Istikhlāf*) encompasses both men and women, and that in Arabic language – the language of the Qur'an- the term *insān* for human and *bashar* for mankind are used to refer to both men and women.²¹¹ Regarding succession for both men and women, she cites the following verses:

“And their Lord has accepted of them, and answered them: "Never will I suffer to be lost the work of any of you, be he male or female: you are members, one of another.”²¹²

“Whoever works righteousness, man or woman, and has Faith, verily, to him We will give a new Life, a life that is good and pure, and We will bestow on such their reward according to the best of their actions.”²¹³

“O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that you may know each other (not that you may despise each other). Verily the most honored of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).”²¹⁴

She points out that this succession comprises a main tenet of man and woman's *tawhīd* (doctrine of monotheism in Islam which holds that God is one and single) in light of them

²¹⁰ *Id.*

²¹¹ Heba Ezzat, *al-qiwwāmah bayn al sulta al 'abawiyya wa al 'idara al shuriyya* (2000), available at <http://www.heba-ezzat.com/2000/05/01/%D8%A7%D9%84%D9%82%D9%88%D8%A7%D9%85%D8%A9-%D8%A8%D9%8A%D9%86-%D8%A7%D9%84%D8%B3%D9%84%D8%B7%D8%A9-%D8%A7%D9%84%D8%A3%D8%A8%D9%88%D9%8A%D8%A9-%D9%88%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D8%A9/>.

²¹² Quran 3:195, translated in 'Abdullah Yusuf Ali, *supra* note 1, available at http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_3_al_imran/0. This verse was revealed when Umm Salama, the wife of the Prophet, asked him “Why are women never mentioned in the Quran as men are?” During the Zuhr prayer of that day, the Prophet disclosed the revelation of the verse. In his *tafsīr*, 13th century classical commentator Al-Baydāwī writes that “the verse says “‘Ye are members, one of another,’ because the male is from the female, and the female is from the male, both are from one origin.” NĀSIR AL DĪN AL-BAYDĀWĪ, 5 TAFSĪR AL-BAYDĀWĪ: ANWAR AL TANZĪL WA ASRĀR AL- TA'WĪL 55 (Dār Ihyā' Al Turāth Al 'arābī 1997).

²¹³ Quran 16:97, translated in *id.* available at http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_16_the_bee/0.

²¹⁴ Quran 49:13, translated in *id.* available at http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_49_the_inner_apartments/0.

(men and women who are believers) “[...being] protectors of one another.”²¹⁵ They are both equal in terms of human value, social rights, responsibility, and punishment.

In her work, Ezzat emphasizes that as it was put by the Zahiri *faqīh* ‘Ibn Hazm, legal rules governing inheritance in *Sharī’ah* and the exemption of women from the economic burdens of the household are only exceptions to the original rule (*al-asl*) of equality between the sexes.²¹⁶ Equality between men and women in *Sharī’a* is absolute in some of its aspects, and relative and particular in those which conform to some of the different characteristics between both sexes, serving thus their complementary roles in achieving succession. Ezzat cites ‘Ibn Hazm’s statement that since the Messenger of Allah peace be upon him – was sent to men and women alike, and that the words of God and his Prophet to men and women are one, it is not permissible to allot any of it to men without women, unless there is a clear text or consensus, since particularization of what is apparent and obvious (*Zāhir*) is not permissible.²¹⁷ This shows a) that there was an awareness among the circles of jurists that the general rule invoked by Sharia’s equality between all b) that any exceptions made to this rule unless sanctioned by God, or reached by the consensus of all the jurists in one era, are arbitrary since God is neutral and since the Prophet (PBUH) said “My *’ummah* will never agree upon an error.”²¹⁸

Ezzat writes that *qiwwāmah* has been cited three times in the Qur’an, and not just in the verse Q. 4:34 of the Qur’an, to which most writers confine the term and examine it separately:

²¹⁵ Quran 9:71, translated in *id.* available at http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_9_repentance/0. *Wilāyah* in this verse is understood in its general meaning revealed in Q. 2:257 “Allah is the ally of those who believe,” and as *wilāyah* of supporting allies and protectors during conquest, on this, the verse Quran 5:51 was revealed regarding Muslims and People of the Book: “O you who have believed, do not take the Jews and the Christians as allies. They are [in fact] allies of one another. And whoever is an ally to them among you - then indeed, he is [one] of them.” See also Quran 8:72 and 8:73, translated in *id.* available at http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_8_the_spoils_of_war/0. Support given by women in this case was different; it did not involve them fighting directly in the conquests, but rather going out with the army to provide food and drink for the soldiers, nurse the wounded, and encourage the soldiers to combat in battles.

²¹⁶ Ezzat, *supra* note 211.

²¹⁷ *Id.*

²¹⁸ *Id.*

“O ye who believe! Stand out firmly for justice [*kunu qāwamīn bil qisti*], as witnesses to Allah”²¹⁹

“O ye who believe! Stand out firmly for Allah [*kunu qāwamīn lil Allah, shuhadā’ bil qist*], as witnesses to fair dealing”²²⁰

Qiwwāmah in these two verses is shown to be a general characteristic of both men and women; both are protectors of Islam (*kāwamun ‘ala amr al dīn*) and witnesses.

Qiwwāmah is associated with justice and *tawhīd* both at the general level of ‘*Ummah* and at the household level where man is given the responsibility over the household affairs.

This responsibility entails justice in running those affairs that have been entrusted to him by God, which to Ezzat is antithetical to the concept of authority as the latter could be misunderstood as absolute freedom to act; understanding *qiwwāmah* as male authority to Ezzat negates the notion of the verse.²²¹

Ezzat writes that the word “*qawwam*” involves two important elements: 1) the man takes it upon himself to provide spiritual and material needs of the woman, so as to ensure proper satisfaction of her wishes as well as her own tranquility and serenity 2) the man offers the woman protection and care and manages the family’s affairs justly. She also provides that the *qiwwāmah*, which she at this point of her work starts to refer to as “authority” rather than responsibility, is subject to restrictions that give way to the capability and eligibility of women and children to act within the strictures of what is deemed legitimate and permissible in Islam. Of these restrictions Ezzat mentions that the only authority that the head of the household has over his sons and daughters who attain majority (hit the age of puberty) is guidance. She specifically states that the man has no specific authority with regards to granting his major daughters permission to marry. Major sons and daughters Ezzat asserts have full personal rights, whether in economic or social life dealing or in choosing their career or spouse.

²¹⁹ Quran 4:135, translated In ‘Abdullah Yusuf Ali, *supra* note 1, available at http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_4_the_women/0.

²²⁰ Quran 5:8, translated in *id.* available at http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_5_the_table_spread/0.

²²¹Ezzat, *supra* note 211.

With regards to the ‘illah of *qiwwāmah*, Ezzat mentions that many scholars have attempted to unravel the *ratio legis* behind Islamic legislation of *qiwwāmah*. According to Ezzat, some of the *mufasssirūn* identified the ‘illah to be a material and economic one since “the man is the one who maintains the family [*haythu ‘anna al rajul huwa’ al ‘a’ilū li ‘al ‘usrah*].” The second ‘illah which is preference, Ezzat argues, should be understood in light of the distinction between “characteristics of manliness and femininity.” She asserts that the term *darajah* mentioned in another verse discussed earlier is not associated with maleness but rather with manliness which can be defined as certain mannerisms and characteristics present in a man in light of which the man is given the trusteeship of *qiwwāmah*.²²²

B. Contemporary Interpretive Strategies:

The first part of this section constitutes a vital component of this thesis; it tells the story of the progressive feminist and egalitarian Qur’anic interpretation that stand in contrast with the methods of traditional religious *mufasssirūn*. It then presents the interpretive tools that shape the fragmented yet interrelated body of work of early and late progressive Muslim thinkers, who share a common genealogy in their mining of modernist interpretations from the Qur’an.

In the 1920s, in a context where women’s role and social status was being reevaluated, and while the modernist wave allowed for a degree of skepticism of traditional Islamic authorities which had full control over Islamic knowledge, Qur’an-based Islamic feminism emerged.²²³ Feminist *tafsīr* can be defined as a contemporary strand of Qur’anic *tafsīr* which unlike pre-modern *tafsīr* works, explicates the Qur’an not by proceeding systematically through the entirety of the text.²²⁴ Instead in their work they select verses according to their applicability to the themes of interest of the interpreter who reads the selected verse in conjunction with another to shed light on the Qur’an’s

²²²*Id.*

²²³See NAZĪRAH ZAYN AL-DĪN, *AL-SUFŪR WA-AL-HIJĀB* (Dār al-Madālil-Thaqāfah wa-al-Nashr 1988).

²²⁴HIDAYATULLAH, *supra* note 183, at 35-45.

broader treatment of the chosen themes.²²⁵ These feminists claimed their authority to engage with and interpret the Qur'an and Sunna; and to critically examine *tafsīr* and *fiqh* literature and hadith compilations. By doing so, they attempted to elucidate that the Islamic tradition is neither singular nor immutable. Their aim was to problematize patriarchal religious knowledge and “to produce new knowledge that makes the case for gender equality and justice from within an Islamic paradigm.”²²⁶ Their successors emerged in the late twentieth century as the Islamic revivalist movements developed across the Muslim world.

This section presents three interpretive tools: a) the historical contextualization method, b) the intratextual method, and c) the tawhīdic paradigm. The Historical contextualization method of interpretation of the Qur'an entails the usage of the historical context in which the verse was revealed to provide further insight on the interpretation of the verse.²²⁷ The historical contextualization method relates to the narrative tool used in *tafsīr* literature: occasion of the revelation (*'asbāb al-nuzūl*). This tool can be defined as “reports, transmitted generally from the Companions of Muhammad, detailing the cause, time, and place of the revelation of a portion of the Qur'an.”²²⁸ The occasion of revelation thus “acts in a historical-theological way, acting as the guarantor of the veracity of God's revelation to man and His concern for His creation.”²²⁹ *'Asbāb al-nuzūl* act as “an authoritative interpretational context” and an indication for *mufasssīrūn* of which portions of a verse are solely attached to the historical event and which despite the occasion of revelation have broader insinuations.²³⁰ Nevertheless, authoritative *mufasssīrūn* are found to be reluctant in putting too much weight on this tool in reading and interpreting Qur'anic verses. This is due to their “fear that doing so might suggest that the revelations

²²⁵*Id.* at 88-9.

²²⁶Mulki Al-Sharmani, *Islamic Feminism: Transnational and National Reflections*, 4 APPROACHING RELIGION, 83 (December 2014).

²²⁷HIDAYATULLAH, *supra* note 183, at 65.

²²⁸Andrew Rippin, *Occasions of Revelation*, *Encyclopedia of the Quran*. Brill Online (2005), available at http://referenceworks.brillonline.com/entries/encyclopaedia-of-the-quran/occasions-of-revelation-EQSIM_00305.

²²⁹*Id.*

²³⁰AHMAD VON DENFFER, 'ULUM AL-QUR'AN: AN INTRODUCTION TO THE SCIENCES OF THE QUR'AN 101 (Islamic Foundation 1994).

were determined by historical circumstances, that is, that the *'asbāb al-nuzūl* might be construed as ‘occasions for (not of)’ revelation.”²³¹

In addition, the historical contextualization method also entails that the *mufassirūn* differentiate between descriptive and prescriptive verses (i.e. verses that describe norms that were common in the first Islamic century and those that prescribe a certain conduct to the readers).²³² Nevertheless, there exists a controversy regarding the use of this method as traditional *mufassirūn* saw that the usage of a historical situation to understand a verse, undermines its universal usage through time and space and thus resorted to having a limited use of it.²³³ This is because “any implication that a verse’s application is somehow limited only to the specific situation or persons identified (...) is generally regarded (...) as dangerous and unacceptable,” by traditional *mufassirūn*.²³⁴

Nevertheless, feminist *mufassirūn* argue otherwise that disregarding or undermining the historical context leads in fact to a distorted understanding. This distorted understanding comes from “universalizing particulars” that is placing the weight of universality on a particular situation from which a universal principle should be deduced.²³⁵ Feminist *mufassirūn* thus claim that similarly much of the Qur’anic verses have become universalized particulars from which the real universal intent has been undermined in favor of the particular universalized understanding.²³⁶

There has been a lengthy discussion over the relationship between history and the Qur’an. Asma Barlas argues that egalitarianism is part and parcel of the epistemology and ethics of the Qur’an, advocates reading the Qur’an as a historically situated text. Conservative and traditionist Islam hold that God’s word is eternal and that God has spoken in a concrete historical situation where the Prophet Muhammad was merely a passive

²³¹ Barbara Stowasser, *The Qur’an and History* in BEYOND THE EXOTIC: WOMEN’S HISTORIES IN ISLAMIC SOCIETIES 23 (Amira Sonbol ed., Syracuse University Press 2005).

²³² Hidayatullah, *supra* note 183, at 65-6.

²³³ *Id.* at 66-7.

²³⁴ *Id.* at 68.

²³⁵ *Id.* at 67.

²³⁶ *Id.* at 66-8.

recipient of God's word revealed to him. Traditionists in Baraba Stowasser's words "deny that the [the Prophet] participated in shaping content or even form- including language and style—of God's message" and in doing so she argues that they in fact "deny that God spoke in a concrete historical situation." [1] The problematic relationship between "immanence and transcendence" is demarcated by the latter "which eliminates the value [...] the possibility of historical critical methods of scripturalist interpretations."

Second, the intratextual method emphasizes an understanding and interpretation of the verses that takes into consideration the whole body of the Qur'an. That is to interpret the Qur'an using the Qur'an or *tafsīr al-Qur'an bi-l-Qur'an*²³⁷. This is even emphasized by verses in the Qur'an itself such as: "We believe In the Book; the whole of it is from our Lord" and "Those who break the Qur'an into parts. Them, by thy Lord, We shall question, every one, of what they used to do."²³⁸ While there is consensus regarding the use of this method, the practical implementation of it is mostly "inconsistent, unsystematic and haphazard."²³⁹ That is to say, that a systematic model does not exist for the intratextual and holistic interpretation of the Qur'an text. Wadud comments particularly on the lacking of a methodology that brings together and contrasts similar and differing ideas, themes, principles and linguistic structures within the Qur'an.²⁴⁰ With this conceptualization of intratextual interpretation, the feminist *mufasssirūn* argue that many of the patriarchal readings of verses such as the *qiwwāmah* verse are in fact inspired by unitary readings focusing on certain words or phrases and undermining the holistic reading of the subject matter.²⁴¹

Finally the Tawhīdic paradigm's main principles entail that no one has the final word regarding the interpretation of the Qur'an. This method emphasizes the unity, uniqueness and indivisibility of God and thus considers the any form of differentiation between races, sexes or otherwise to be a form of *shirk* or idolatry.²⁴² This is so since such a form of

²³⁷*Id.* at 87.

²³⁸*Id.* at 88.

²³⁹*Id.* at 87-9.

²⁴⁰*Id.* at 89-90.

²⁴¹*Id.*

²⁴²*Id.* at 111-2.

differentiation implies a perception or judgment of superiority made by one human against the other which is a judgment that is exclusive to God.²⁴³ Thus using the same logic, feminist *mufassirūn* claimed that readings of verses such as the *qiwwāmah* verse that perpetuate concepts of female obedience to men create idols out of men by creating a spiritual hierarchy in which women have to show obedience to men in order to be obedient to God.²⁴⁴ Thereby, they condemn such a reading as being idolatrous.

Having defined the interpretive strategies that have mostly shaped contemporary progressive interpretations of select verses from the Qur'an, the next section moves on to illustrate how these interpretations result in different conceptualizations of the nature and role of woman in the Islamic institution of marriage as well as the textual sources' position towards the religious other and their status within a Muslim community.

1. Their Application:

By looking in the previous chapter of this thesis at the concept of *qiwwāmah* in Q. 4:34 and *fiqh* discourse on transacting and maintaining marriage, I argued that a normalization of the status and nature of woman has been established in the Islamic tradition. In light of this normalization, IFM verses have been read and regulations were laid. The second factor determinant to how IFM have been regulated in Islamic legal discourse, is how the religious other (in this case the People of the Book) is made sense of in the Islamic tradition. A critical reexamination of these conceptualizations can alter how the verses governing IFM between Muslims and *Ahl al-kitāb* are understood. In carrying out this critical reexamination, I survey some of the contemporary works of scholars who question these conceptualizations established in the tradition by directly engaging with the Qur'anic text.

'Amīnah Wadud, a professor of Islamic studies with a progressive focus on Qur'an's *tafsīr*, contextualizes Q. 4:34 in her book *Qur'an and Woman*, a classic work of feminist Qur'anic interpretation. Wadud states that "the verse is describing a specific socio-

²⁴³*Id.*

²⁴⁴*Id.* at 113-4.

economic situation in which a husband is the financial provider for his wife and child but only under specific conditions.”²⁴⁵ The first of these conditions is that he must be preferred by God and she restricts this to the situation in which men receive a greater share of inheritance than women, this occurs “when the share of male is twice that of a female within a single family.”²⁴⁶ Second, the husband must be financially capable of supporting his family from his income. She indicates that the nuanced section of the verse “some are preferred over others” is further hint of the specificity and particularity of the verse.²⁴⁷

In her contextualization of the verse, Wadud also aspires for a more broadened reading of *qiwwāmah* as communal responsibility so as to fit the changing historical context of family relationships. She elaborates on Qutb’s understanding of *qiwwāmah* which she says is purely material, and suggests that attention be given to “the spiritual, moral, intellectual, and psychological dimensions as well [...] Such an attitude will overcome the competitive and hierarchical thinking which destroys rather than nurtures.”²⁴⁸

Wadud also employs the intratextual method in her attempt to read the part of the verse sanctioning hitting (*fa’ idribuhunna*) as a form of disciplining the wife. She argues that the word *idribuhanna* has various definitions and usages yet one of these usages is to indicate striking a person. Nevertheless, Wadud still puts forward that Qur’anic passage cannot justify violence against women in marriage as the goal of a husband striking his wife in the verse was harmony not harm and that the text in line with the Qur’an’s position on equity and kindness should be read as restricting violence. This is particularly evident for Wadud in that early jurists also pronounced limitations and restrictions on the act of striking one’s wife. Although Wadud engages extensively with *tafsīr* of Qur’anic verses, yet her interpretations are not informed by considerations “relating to Sunna or

²⁴⁵AMINA WADUD, QUR’AN AND WOMAN 71 (Oxford University Press 1999).

²⁴⁶*Id.*

²⁴⁷*Id.*

²⁴⁸*Id.* at 74.

Islamic legal theory [...] it offers a partial understanding of how normative Muslim woman's constructs are formulated.”²⁴⁹

'Asmā' Barlas offers alternative interpretation of Q. 4:34. Unlike Wadud, Barlas engages in a critique of the association between the patriarchy manifested in the interpretations of *tafsīr* works and the Qur'an which was perceived as a patriarchal text. This association between both was a result of the prevailing Muslim historical context and was “central in determining and defining religious epistemology and methodology, thus also how Muslims came to read the Qur'an.”²⁵⁰ Barlas states that making the interpretation of the Qur'anic text dependent on the Sunna which was afterwards merged into the canonical hadith literature resulted in removing the text's hermeneutical privilege. This is because it reduced the scope of what might be deemed an authentic or an authoritative reading of the Qur'anic text and its epistemological and methodological techniques and sources.²⁵¹ Both Barlas and 'Azīzah al-Hibrī utilize the intratextual method pointing to verses such as Q. 9:71 which designate both men and women to be each other's protector.²⁵² This verse to both constitutes textual evidence that undermines any interpretation of *qiwwāmah* in Q. 4:34 as male intellectual and moral superiority and authority over women.²⁵³ Al-Hibrī reads *qiwwāmah* in Q. 4:34 as “affirmative action to protect women. The revelation about maintenance provided women against poverty” in a given contextual situation where women were dominated by men.²⁵⁴ She asserts that in such a situation “God gave the man supporting a woman the responsibility of offering the woman guidance and advice in those areas in which he happens to be more qualified or experienced.”²⁵⁵

In her re-examination of the concept of *qiwwāmah*, Asma Lamrabet, a Moroccan Islamic feminist, provides an egalitarian reading of *qiwwāmah* and simultaneously criticizes how

²⁴⁹ DUDERIJA, *supra* note 22, at 9.

²⁵⁰ ASMA BARLAS, "BELIEVING WOMEN" IN ISLAM: UNREADING PATRIARCHAL INTERPRETATIONS OF THE QUR'AN 203 (University of Texas Press 2002).

²⁵¹ *Id.*

²⁵² *Id.* at 186. See also Azizah al-Hibri, *A Study of Islamic Herstory* in WOMEN AND ISLAM 208 (Azizah al-Hibri ed., Pergamon Press 1982)

²⁵³ *Id.*

²⁵⁴ Azizah Y. al-Hibri, *An Introduction to Muslim Women's Rights*, in WINDOWS OF FAITH: MUSLIM WOMEN SCHOLAR-ACTIVISTS IN NORTH AMERICA 63 (Gisela Webb ed, 2000).

²⁵⁵ *Id.*

the perception of *qiwwāmah* and *tā'ah* in the tradition “facilitated the proliferation of a whole religious literature that devalues women and has hindered the liberating spirit of the Qur’anic message regarding women and their status in the marriage and family.”²⁵⁶ Lamrabet uses the intratextual method to understand *qiwwāmah* where she reads 4:34 in light of “the emancipatory message” of the Qur’an emphasizing that the Qur’an has encouraged believers to free slaves in accordance with Q. 2:177, 90:30, and 9:60, especially female slaves.²⁵⁷ Nevertheless she claims that the interpretations of authoritative *mufassirūn* to be a result of a developing social context. Lamrabet states that²⁵⁸ “not long after the Prophet’s death, during the Islamic conquests, the taking of *jariyat* (female slaves) became the sign of a ruler’s wealth [...] with *jariyat* cloistered in the palaces and political consultation (*shura*) replaced by autocracy.”²⁵⁹ Lamrabet argues that because of these social pressures *qiwwāmah* “was construed according to the reading of *hakimiya* (political governance), since the husband’s authority was explicitly linked to that of the *Hakim* (head of state).”²⁶⁰

In her examination of the verses governing IFM, Asma Lamrabet states that some commentators attempted to justify the prohibition by providing Q. 60:10, the context revelation and meaning of which she asserts is not “associated with the case of marriage to non-Muslims.”²⁶¹ Lamrabet argues that as the explanation of the verse demonstrates, its purpose is to “prevent the extradition of women who converted to Islam and avoid the vengeance of their respective families... to meet some strategic requirements of protecting women who converted to Islam against the will of their family and who voluntarily asked for the Prophet’s protection.”²⁶²

Lamrabet also highlights an important contradiction in *tafsīr* literature. She puts forth that the proponents of the position that Q. 2:221 excludes *Ahl al-kitāb* from the *mushrikīn* and *mushrikāt* that Muslims are not permitted to marry, are the same people who claim that a

²⁵⁶Asma Lamrabet, *An Egalitarian Reading of the Concepts of Khilafah, Wilayah, and Qiwamah* in MEN IN CHARGE? REEXAMINING AUTHORITY IN MUSLIM LEGAL TRADITION 139 (Oneworld Publications 2015).

²⁵⁷*Id.*

²⁵⁸*Id.*

²⁵⁹*Id.*

²⁶⁰*Id.*

²⁶¹Asma Lamrabet, What does the Qur’an Say about the Interfaith Marriage? (Jan. 2013), available at <http://www.asma-lamrabet.com/articles/what-does-the-qur-an-say-about-the-interfaith-marriage/>.

²⁶²*Id.*

Muslim woman cannot marry a Jewish or a Christian man because they are disbelievers.²⁶³ Since the Qur’anic order given in Q. 2:221 quite clearly addresses both Muslim men and women equally, it becomes essential to rethink how regulations governing IFM for both came to be built and perceived differently in fiqh discourse. Lamrabet rethinks the prohibition of a marriage between Muslims and mushriks in Q. 2:221. She thoroughly examines the context of the revelation of this verse stating that its “order made sense” as the *mushrikīn* whom she refers to as polytheists were “an aristocratic class of obscene wealth and indecent conduct.”²⁶⁴ There were thus two aims of this regulation according to Lamrabet: 1) Q. 2:221 urged Muslim men and women to choose the “modest believing slaves over the rich arrogant polytheists” to encourage Muslims to value people on basis other than their social class, thus, establishing a balance between the differences established by the ethnic-tribal system at that time 2) The Qur’anic verse urges Muslim men and women to get married to believers who had, like them, such faith awareness and were conscious of justice on earth.²⁶⁵

Nasr Hāmid Abū Zayd also presents what he sees as a logical contradiction between time and place specificity of *’asbāb al-nuzūl* which has been acknowledged in traditional Islamic discourse while traditional scholars also were simultaneously determined to preserve the text’s word for word eternal nature.²⁶⁶ He uses the historical contextualization method in his book to read Q. 4:34 stating that *qiwwāmah* is not a legislative verse but rather a descriptive one of a reality in seventh century Arabia that Islam aspired to gradually change to achieve justice.²⁶⁷ Abū Zayd asserts that the Qur’anic text revealed took into consideration the setting and circumstances of those addressed. He cites al-Suyūṭī’s narratives of the occasion in which Q. 4:34 was revealed, stating that in one narrative, the Prophet condemned the man who hit his wife, and in another narrative, demanded retaliation for the woman who was hit.²⁶⁸ Abū Zayd considers these condemnations by the

²⁶³*Id.*

²⁶⁴*Id.*

²⁶⁵*Id.*

²⁶⁶NASR HAMID ABU ZAYD, *MAFHŪM AL-NASS : DIRĀSAH FĪ ‘ULŪM AL-QUR’ĀN* 131-4 (Al Markaz al-Thaqāfi al-‘arabī 2014).

²⁶⁷NASR HAMID ABU ZAYD, *DAWĀ’IR AL-KHAWF: QIRĀ’AH FĪ KHITĀB AL-MAR’AH* 213-15 (Al Markaz al-Thaqāfi al-‘arabī 2014).

²⁶⁸*Id.*

Prophet as clear textual implications (*dalālāt wādihah*) whose purpose is “to emphasize the original principle of equality in Islam.”²⁶⁹ *Qiwwāmah* to Abū Zayd was a regulatory tool governing the authority and preference given to men over women according to the then existing conventional societal rules.; *qiwwāmah* represented an incremental and a progressive step towards an equality that was not yet to be tolerated by those to whom the Qur’anic text was revealed.²⁷⁰ Feminist *tafsīr* also alludes to the creation story in the Qur’an as evidence for human equality irrespective of sex. All verses thus that govern male-female relations should thus be read in light of the creation story.

In his work, Farid Esack, a South African Muslim theologian, argues that terms *kufr*, *shirk*, *’imān* and *Ahl al-kitāb* are dynamic terms that “are embodied in certain qualities of individuals in different stages of their lives.”²⁷¹ These terms can have a number of meanings and connotations which can be doctrinal, philosophical, spiritual, ideological, and that are intertwined and which can change over time. These concepts are “inherently linked to issues of righteous deeds [...] they can exist at an abstract and reified levels.”²⁷² Esack argues that the association of these reified concepts with a particular socio-religious and historical community resulted in the narrowing of boundaries of belief in Islamic theology.²⁷³ The abstract concept of *’imān* was substituted with Islam for self-identification. Donner argues that the narrowing of the confessional identity of *’imān* resulted in the refusing to grant the status of believer to anyone outside the Prophet’s socio-religious and historic community.²⁷⁴ Esack perceives *’imān* as “a personal recognition of and an active response to the presence of God in the universe and in history,” and identifies the dynamism inherent in the concept on many levels which ranges from dilute to perfect *’imān*.²⁷⁵ Similarly when speaking of the concepts of *kufr/shirk*, Esack argues that the early *mufasssīrūn* failed in making a distinction between

²⁶⁹*Id.*

²⁷⁰*Id.*

²⁷¹ESACK, *supra* note 30, at 115.

²⁷²DUDERIJA, *supra* note 22, at 172.

²⁷³ESACK, *supra* note 30, at 125-7.

²⁷⁴*Id.*

²⁷⁵*Id.*

kufr “as an active attitude of individuals and the socio-religious ethnic identity of the group.”²⁷⁶

Esack reads the Qur’anic texts that deal with the concept of *wilāyah* with regards to the Muslim and the religious other, as an ideological-political issue rather than a doctrinal one. Esack asserts that when these texts are understood in their historical contexts offer a radically different perspective to that which a casual and decontextualized reading render.”²⁷⁷ On *Ahl al-kitāb*, Esack writes that “to employ the Qur’anic category of the people of the Book in a generalized manner of simplistic identification of all Jews and Christians in contemporary society is to avoid the historical realities of Medinian society, as well as the theological diversity among the both earlier and contemporary Christians and Jews.”²⁷⁸ He makes a clear statement that nowhere “in the disciplines of exegesis, Islamic history or legal scholarship have the Muslims known anything approximating consensus about the identity of the People of the Book.”²⁷⁹ In fact, based on the theological predilections of Muslim scholars and often the geo-political context in which these scholars lived, Hindus, Sabeans, Zoroastrians, Buddhists, and Magians were at various times either included or excluded from the category of the People of the Book.²⁸⁰

In contrast to Esack’s broader understanding of *’imān*, Shahrūr argues that the concept of *’imān* is in fact less general than that of *’islām* (which literally means submission); he defines the former as those who possess the quality of Islam which is belief in God and the last day and doing what is righteous.²⁸¹ Shahrūr defines the latter as those who have a specific religious belief as well as particularistic ethics based on this belief which can be traced back to the Prophet Muhammad.”²⁸² Based on this he also constructs a classification of the concept of *kufr*: a *kufr* in the realm of *’imān* and a *kufr* in the realm of *’islām*. The latter rejects the minimal requirements of *’islām* mentioned above while the

²⁷⁶*Id.* at 134-9.

²⁷⁷*Id.* at 203.

²⁷⁸*Id.* at 152.

²⁷⁹*Id.* at 153.

²⁸⁰*Id.*

²⁸¹MUHAMMAD SHAHRÜR, *QUR’AN, MORALITY, AND CRITICAL REASON: THE ESSENTIAL MUHAMMAD SHAHRÜR 20-70* (Andrea Christmann ed., Brill 2009).

²⁸²*Id.*

latter dismisses the Prophethood of Muhammad and the Qur'an as being of divine origin.²⁸³

Sa'd Al-Dīn Al-Hilālī, head of the Comparative Islamic Jurisprudence department in Al-Azhar University, has voiced an opinion describing Christians and Jews as Muslims.²⁸⁴ He cites Ibn Taymiyyah who says that Islam can be classified into two categories, one being general, encompassing Muslims and all other followers of monotheistic religions, and the other particular, pertaining only to Muslims. Al-Hilālī cites scriptural evidence for his claim namely Q. 22:78:

And strive in His cause as you ought to strive, (with sincerity and under discipline). He has chosen you, and has imposed no difficulties on you in religion; it is the cult of your father Abraham. It is He Who has named you Muslims, both before and in this (Revelation); that the Messenger may be a witness for you, and you be witnesses for mankind! So establish regular Prayer, give regular Charity, and hold fast to Allah! He is your Protector - the Best to protect and the Best to help!²⁸⁵

Al-Hilālī interprets from this verse that any of the three monotheistic religions is considered Islam. To support this Al-Hilālī also cites Q. 3:19: “The Religion before Allah is Islam (submission to His Will): nor did the People of the Book dissent therefrom except through envy of each other, after knowledge had come to them. But if any deny the Signs of Allah, Allah is swift in calling to account.”²⁸⁶ Al-Hilālī also claims this opinion to be one that is old having been mentioned in past traditional jurisprudential works. He particularly mentions 'Ibn Al-Salah who said, “All past monotheistic 'Ummahs should be regarded Muslim since Allah described all prophets as Muslims”, he thus argues that it doesn't make sense that their followers won't be considered equally Muslims. To this Muhammad Al-Ghazālī, an Islamic cleric and scholar who was a prominent advocate of moderate Islamic revivalism, writes that those who are considered *Mu'minun* are those who followed Jesus and Moses without changing their words, who he asserts would have followed Prophet Muhammad themselves had they been alive.²⁸⁷ Al-Ghazālī thus refers to a narrower group from amongst Christians and Jews as *mu'minun*

²⁸³ *Id.*

²⁸⁴ Walīd Farūq, *Dr. Sa'd Al-Dīn Al-Hilālī: Kulu 'Atbā' al-Diyaānāt al-Samāwiyya bi 'Amr Allah Muslimūn*, AL-SHABAB, January 07, 2015, at 8.

²⁸⁵ Quran 22:78 translated in 'Abdullah Yusuf 'Ali *supra* note 2, available at http://search.credoreference.com.library.aucegypt.edu:2048/content/entry/quran/surah_22_the_pilgrimage/0

²⁸⁶ Farūq, *supra* note 284.

²⁸⁷ MUHAMMAD AL-GHAZALI, SAYHAT TAHZĪR MIN DU'ĀT AL TANSĪR 85-8 (Dar Nahdit Mist 2002).

with “no difference between them and those believers who came later [Muslims] in worshipping God, good manner, and reward.”²⁸⁸ He cites in support of his position Q. 5:44 and Q. 2:62. Yet he asserts in another section of his book that an interfaith marriage of Muslim woman to a *Kitābī* man is impermissible because of *Qiwwāmah*.

Ahmed Subhy Mansour, an Islamic scholar who rejects the science of hadith altogether and believes that the Qur’an is the sole source of *Sharī’a*, offers yet another understanding and interpretation of interfaith marriage and the implied loyalty and adherence (*walā’* and *muwālāh*) between both parties created through contractual marriage and the creation of familial ties and relationships. In his work, Mansour criticizes the Wahhabi understanding of *muwālāh*/ adherence and loyalty at the times of War claiming that contrary to their understanding of it the idea of declaring *walā’*/ loyalty and *barā’*/ enmity in Islam²⁸⁹ is dependent mostly on the person’s actions rather than on their creed and persona in particular. That is to say that enmity towards a particular person goes back to his disagreeable action rather than his belief in a certain system.²⁹⁰ Furthermore he continues by saying that the degree of enmity is also dependent on the degree of disagreeableness of that person’s actions.

Once Mansour establishes that *muwālāh* with a *mushrik*, *Kitābī* and *Kāfir* is possible, he addresses the issue of interfaith marriage between Muslims and Scriptural people generally stating that the claim that the allowance of marriage made in verse Q. 5:5 is only inclusive of earlier Christians and Jews who came before the revelation is incorrect. His argument against such statements being that the Qur’an should not be limited in time if such a limitation is not to be gleaned out of the text itself. Furthermore, Mansour states that the examination of verse Q. 5:5 shows that as the food of *Ahl al-kitāb* was allowed for Muslims and the food of Muslims allowed for *Ahl al-kitāb* so it follows that the

²⁸⁸*Id.* at 88.

²⁸⁹*Al-Walā’* is a manifestation of sincere love for Allah, his prophet and the believers; *al-Barā’* is an expression of enmity and hatred towards falsehood and its adherents. Both are evidence of *’Imān*. See Uriya Shavit, *Can Muslims Befriend Non-Muslims? Debating al-walā’ wa-al-barā’ (Loyalty and Disavowal) in Theory and Practice*, 25 ISLAM AND CHRISTIAN-MUSLIM RELATIONS 67-88 (2014).

²⁹⁰Ahmed Subhy Mansour, *Al-walā’ wa al barā’ fi al-Islam: Qirā’ah Tahliliya li surat al –mumtahanah*, available at, <http://www.ahewar.org/debat/show.art.asp?aid=74381>.

marriage of women from both sides is also allowed according to Mansour's reading of the verse.²⁹¹

2. Critique:

Feminist *tafsīr* has been criticized for treating “gender equality as a norm established by the Qur’an, to the point of becoming a blinding dogma.”²⁹² Not only that, but these interpreters staunchly believe in the true egalitarian nature of the Qur’an. It is essential that feminist *mufasssīrūn* take interpretive responsibility by critically investigating what they demand of the text. This is becoming increasingly urgent, as feminist *mufasssīrūn* have continuously been critiqued for their abandonment of the principles of Qur’anic *tafsīr*, lacking *adab* (proper manner) with regards to the revered tradition of *tafsīr*, and that their readings and understandings of concepts in the Qur’an are merely based on personal inclinations.²⁹³

²⁹¹*Id.* Another possible argument was that Q. 4:23 did not address women saying that they were prohibited from marrying their fathers, sons, and brothers etc... when it said “Prohibited to you (for marriage) are: - your mothers, daughters, sisters; father's sisters, mother's sisters; brother's daughters, sister's daughters; foster-mothers (who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom you have gone in, - no prohibition if you have not gone in; - (those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-forgiving, Most Merciful” In turn, the absence of text in Q. 5:5 allowing for an interfaith marriage between a Muslim woman and a *Kitābī* man vis a vis the text explicitly sanctioning such a marriage between a Muslim man and a *Kitābiyyah* is not an indication of the former's prohibition.

²⁹² Rouhani

²⁹³ In addition, the historicity of feminist viewpoints cannot be overlooked when it comes to Qur’anic text that does not easily conform to an understanding of gender egalitarianism. See HIDAYATULLAH, *supra* note 183, at 155.

IV. Conclusion:

The authoritative works in *fiqh* and *tafsīr* literature discussed in this thesis incessantly reaffirm the consensus of the ‘*ulamā*’ that an interfaith marriage between a Muslim woman and a *Kitābī* man is prohibited. As evidenced in the scholars’ work, there is variance in their reading of the available textual sources to produce the prohibition. They also reason with other forms of evidence to support their position. Consequently, the consensus cannot be said to have been based on definite textual evidence but rather on a normative understanding of the textual sources at hand. In looking at how the consensus was built and how the three verses governing IFM regulations were linked in *tafsīr* and *fiqh* sources, it is clear that the basis on which this rule has become an essential element of *Sharī‘ah* is far from being uniform.

This lack of uniformity is due to three reasons. First is the different ways the prohibition has been deduced from the Qur’anic evidence. Some have simply arrived at the conclusion that Q. 2:221 addressed both Scripturaries and polytheists and that Q. 5:5 made an exception to Muslim men with regards to Scriptural women. Others who read Q. 2:221 as solely addressing polytheists, asserted its applicability to Scripturaries given the common *ratio legis* behind impermissibility of such a marriage to Muslims. In light of Q. 5:5, the common *ratio legis* (‘*illah*) detected in Q. 2:221: “Unbelievers do (but) beckon you to the Fire,” was seen by proponents of this position as applicable only to Muslim women. In other discussions, Q. 60:10 came to mark an end of impermissibility of interfaith marriages between Muslims and unbelievers be they polytheists or Scripturaries

The second reason as to why the basis of the consensus on such a prohibition is not constant between scholars, is the monotonous but inconsistent use of traditions to support and legitimize the deductions made, some of whose chains of transmission (‘*Isnād*) are weak. The choice of the traditions used thus not only depends on its ‘*Isnād*’ but also on the *madhab* according to which the *faqīh* is affiliated.

Third, the positions deduced from and supported by textual sources to crystallize the prohibition, are in themselves, based on normative conceptualizations of the nature and

status of the woman in the marriage institution and of the religious other. This thesis argues that behind this prohibition lies the hierarchical perception of the woman, both in society and as a member of family which is articulated as the man's *qiwwāmah* over her. The wife thus becomes analogous in her position to a slave whose master cannot be of a differing religion to maintain Islam's religious and political superiority. *Qiwwāmah* thus becomes key in the discussion on the prohibition of interfaith marriages between Muslim women and Scriptural men because of its governing role in the Islamic perception of the marital relationship. This thesis argues against such a perception by presenting multiple understandings of *qiwwāmah* that can culminate in the production of a contemporary 'Islamic' discourse on interfaith marriage regulations. This thesis also examines the variance in the *tafsīr* and *fiqh* literature with regards to perception of the religious other (*mushrik, kāfir, Kitābī*) which is another determinant factor of how interfaith marriages are regulated in Islamic legal discourse.

In presenting the nuanced discussions of these concepts in *tafsīr* and *fiqh* literature as well as these concepts' contemporary understandings, this thesis makes the case for a re-articulation of interfaith marriage regulations in Islamic legal discourse that is more inclusive and contextualized.