The Representation of the Feminine Body in Iranian Shi’a Jurisprudence

by

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Abstract

This thesis studies the construction of the feminine body in Islamic discourse through specific jurisprudential (fiqh) books, which are the main sources of policy making in the Islamic Republic of Iran. The thesis argues that Shi’a jurisprudence tries to produce human subjects and what is considered an ideal woman in the eyes of the religious books. Shi’a jurisprudence tends to discipline subjects (in this thesis, women) in and into particular ways and exercises specific body politics, which include orders concerning the female body in sexual intercourse, marriage, as well as body coverage. Each of these orders presumes a particular view of the female body and female sexuality. The thesis investigates such body politics, using a discourse analysis of the texts inspired by a Foucauldian methodological framework.

In Shi’a jurisprudential texts, the female body has been defined, disciplined, regulated, and veiled. The thesis argues that in such texts, the feminine body is always covered with notions of shame, discredit, sin, evil, and weakness. These texts are inflexible, male-defined and male-dominated texts and image the female body as a "criminalized body", "reproductive body", "lusty body", and "weak body".
Preface

This thesis is an original, unpublished, independent work by the author, Parnia Vafaeikia.
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sense every page is dedicated to him. I am indebted to the moments full of tears and laughs we have shared together.
Dedication

To my fellow Iranian women and their invisible wounds
Chapter One: Introduction

Motivation: The Iranian Clerics Willing Docile Bodies

In the Islamic Republic of Iran (IRI), which is governed by Shi’a clerics who are supported by military commanders, some incongruous and apparently incompatible occurrences can be observed in regard to sexuality and gender. The issue of mandatory veiling and body coverage is of great concern for the regime of Iran. With the coming of summer and warm weather, the social security forces, (Gasht-e ershad or Guidance Patrol) which are supposed to be in charge of the protection of the chastity of women, become severe with women who transgress the coverage (hijab) boundaries. The Iranian state considers whatever is beyond the boundaries as improper and against the Islamic dress code, based on its reading of Islam. Headscarves that noticeably expose too much hair, tight-fitting coats, flip flops exposing shiny polished toe nails, and loose scarves tied under the chin, are considered serious threats to the Islamic values of the Iranian regime\(^1\). Iran’s national police increase their guards to watch women in the streets, fining and punishing them based on so-called Sharia law and Islamic juristic precepts. The new gender segregation scheme that was recently implemented in many Iranian universities was shocking to the people and students\(^2\).

Another example is the old discussion of the presence of women in stadiums that once caused several clergymen to wear shrouds (Kafan) and demonstrate in the streets to show their opposition against the presence of women in stadiums. All of this does not address gender

\(^1\) For more information see: http://news.bbc.co.uk/2/hi/middle_east/3887311.stm

\(^2\) More information and details find in: http://www.merip.org/mero/mero101812 http://www.rferl.org/content/iran_gender_segregation/2294218.html
segregation at schools, gyms, mosques, public transportation such as buses and subways. In addition, a new bill, which was ratified by the parliament (Majles) and restricted women under forty from obtaining a passport to travel outside of the country without having permission from either their husband or their father, is another recent example of discrimination in regard to gender in Iran. I could also add the massive scandal of raping several political prisoners including men and women in Kahrizak prison after the controversial 2009 presidential election. The list is endless and implies a profound crisis in the discourse of gender and sexuality in Iran, which has the largest Shi’a population in the world.

As anthropologist Mohammad Borgheie states it in his “Sexual Rape: Iranian or Islamic Crime?” [Tajavoz-e jensi: jenayat-e Irani ya Islami] (Borgheie 2009), other violent revolutions in the world, such as the Russian Revolution under Lenin (1917), the Cultural Revolution of China (1966), and the Khmer Rouge of Cambodia (1975), have not focused so much on sexuality compared to what we have known and seen since 1979 in Iran. He refers to his article, entitled “Islamic Revolution of Iran: The Most Sexualized Revolution of the World” [Enghelab-e Islami-e Iran: Sexytarin Enghelab-e jahan], claiming that the Islamic Revolution of Iran (1979) has been the most sexualized revolution in the world. He argues that there are some prominent discourses in every revolution; the most prominent discourse in the Islamic Revolution is sexual discourse. He continues, pointing out that since the dawn of the Islamic revolution surprisingly one of the accusations, true or not, against the most victimized people (such as political activists as well as ordinary people who have been engaged in the political affairs of the revolution) has

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4 See more at: http://observingiran.blogspot.ca/2009/08/interview-with-kahrizak-detainee.html
been their illegitimate sexual relations namely adultery (zina: out of marriage sex) and sodomy. These accusations have been intended to humiliate them.

The issues discussed above describe the unconcealed challenge of the Islamic Republic of Iran with sexuality and the feminine body. In Iran, the issue of “women”, regardless of its own significant weight and position, is closely connected to the issue of political power and political freedom.

Here one might ask how Iran’s governors (clergy class) think about sexuality and the feminine body. Why does this leviathan employ its security forces, national police, and economic recourses to control the sexuality of women? Why is monitoring the feminine body significantly important to clerics? Why is the feminine body so much the focus of ideological, religious and political arguments in Iran?

In order to comprehend the reasons why clerics alongside the authorities have appointed such prohibitions on the feminine body and how clerics and the authorities grasp the feminine body and sexuality, I believe we need to have a thorough study of Shi’a juristic texts. Juristic texts are one of the primary resources of the clerics and other authorities of the IRI. Such texts seem to be the foremost resources developing the attitude, taste, and approach of the authorities towards sexuality and the feminine body.

I maintain that fiqh (jurisprudence) is a masculine domain in which women’s voice is silenced. Even though fiqh recognizes women, issuing precepts for women’s bodies as well as their minds, it is a man’s voice that speaks on behalf of both men and women. As a result, we have a long history of fiqh and a huge volume of juristic books that have been written only by men. However, as Najmabadi smartly asserts, “if we use gender analytically, sources about men
are also sources about women” (Najmabadi 2005, 1). Therefore, although men have written the greatest portion of Islamic jurisprudence and set the religious rulings concerning women, these books should be the basis of analysis, if I use the concept of gender analytically.

The Middle East comprises the world’s most ancient societies with written and established archives, but the organization of gender in each society has not been examined systematically. Among them, Sunni traditions and Arab cultures have been studied more than Iranian Islamic traditions. This attention may be because of the accessibility of resources and the large number of Arab Sunni countries in comparison with Shi’a countries. As Leslie Peirce (2009, 1325) asserts, Iranian studies lack an archive to compare with the rich archive that the Ottomans have been granted. The issue of an accessible archive, thus, is crucial. Another reason for the lack of studies regarding sexuality in Iranian studies could be due to the close linkage of women, politics, and religious rulings, which did not explicitly appear to Iranian women earlier than the Islamic revolution of 1979, when the political power became based on Shari’ah law and Shi’a doctrines.

Study of the constructions of the Orient, Islam, and more recently gendered Islam, have been initiated in several disciplines since the 1970s, starting with Edward Said’s (1979) Orientalism, which was inspired by Michel Foucault’s (1977) observations. Although the field of Middle Eastern Studies with a focus on women started in the 1980s and flourished in the 1990s, most works in this field concentrate on the pre-modern period, as Peirce (2009) argues. Thus, this period “has a longer tradition of sexuality studies” (Peirce 2009, 1327). There is considerable scholarship concerning the way women lived at the advent of Islam or in pre-Islamic communities, as well as the laws they dealt with in order to either support Islam or scrutinize it, either from the advent of Islam or as it currently appears in its non-egalitarian form.
Almost all research in this field has either focused on Sunni women in Sunni communities or examined Sunni texts and documents. However, as Fateme Sadeqi (2013) describes well, Twelver Imami Shi’a is considered to be more conservative than other Sunni schools concerning women’s issues (2013, 315). It is, hence, worth studying this tradition, although Shi’a communities are numerically smaller.

This thesis aims to fill this gap, as less scholarship exists regarding the Shi’a tradition, specifically Shi’a jurisprudence concerning women’s sexualities. Also, as far as I am aware, there has not been any significant analysis of Shi’a jurisprudence, as they reflect gender relations in the Iranian Shi’a texts that I am studying, namely the resalahs. Thus, it is important to acknowledge the different experiences that women have in Iran compared with their counterparts in Arab societies. The foremost one, I assume, is the political experience and confrontation of Iranian women with Islam as of 1979, considering that an Islamic government is in power in Iran. However, most Arab societies from the Persian Gulf to North Africa have had primarily a cultural experience and confrontation with Islam. For instance, the phenomenon of mandatory hijab (headscarves) as a general law in the public spheres of Iran is not seen in Egypt, Qatar, and Morocco etc. Thus, it is of great importance to study further the roots and origins of Iranian Shi’a doctrines.

**Thesis overview**

This thesis consists of four chapters, followed by a conclusion, which is the fifth chapter. In the next chapter, Chapter Two, I will introduce to my western reader, the Islamic tradition with a focus on Shi’a jurisprudence and its historical background and primary definitions. I first aimed to restrict myself to some key points, but the chapter eventually became quite lengthy.
After introducing the sources of Islamic jurisprudence, I will explicate the type of juristic texts that I am using in this thesis. These books are known as resalah, (Arabic for pamphlet or book), also Tozih al-masael (Arabic, meaning a “Clarification of Questions”). Resalahs are books written by Shi’a Marjas that contains their practical rulings dealing with purity, marriage and sexuality, worship, business and trade. Each of these orders supposes a particular view of the body and sexuality. Along with resalahs, I will also address some juristic books, such as some volumes of Al-Lum’ah ad-Dimashqiya (The Damascene Glitter; in Farsi, Lom’e) and the glossary on it, which is known as ar-Rawda-l-Bahiyah fi Sharh allam’a-d-Dimashqiya (The Beautiful Garden in Interpreting the Damascene Glitter; in Farsi, Sharhe Lom’e).

Going through the religious texts is not a small task. It is always vital which text a researcher approaches, as the subjectivity of the researcher plays a major role in interpretation. It is also crucial to know whether the texts are considered valid enough by the people in the discourse of religion, as the researcher deals with an overwhelming number of volumes in the long history of religious literatures and documents. The reason I have chosen the resalahs, Lom’e (by Shahid Awal) and Sharhe Lom’e (the glossary on Lom’e by Shahid Saani) is because of the important status of these books to Iranians. The resalahs are considered religious manner books that are seen in every Iranian household. As for the Lom’e books by jurists Shahid Awal and Saani, the authors argue that these books include the fatwas (creeds and Islamic legal opinions) of the most famous and important Twelver Shi’a jurists. Most importantly, they are among the most influential books on Iran’s civil law and Islamic criminal law (Amini and Ayati 2005, 12). Hence, they are the reference books of Iranian authorities. As Amini and Ayati assert Twelver

5 Marja literally means source to imitate or follow. He is considered a religious reference; known as Grand Ayatollah.
Imami Shi’a fiqh has an incomparable influence on the formation of Iran’s civil law. They argue that the influence and dependency of the law on Shi’a fiqh is so high that the civil law is called “the translation of jurists’ sentences” (Amini and Ayati 2005, 9-10). This account shows well the importance of the Lom’e books in Iran’s laws, including civil law and penal law.

In Chapter Three, I will go through the texts to study the ways the body of women are perceived in such juristic texts. I will discuss the juristic precepts, which target the body in order to politicize, monitor, and criminalize it. The feminine body is seen as a site of fear, as it is full of lust and may cause harm to the social order of the society. Thus, the bodies of women must be carefully disciplined and covered to reduce this harm and fear. The theoretical foundation of these texts is based on the notions concerning women that observe them as deficient in their potentials and abilities and their intellectual capacity. The rulings also encourage male superiority. Men are to be guardians of women within the family and in the society. They put emphasis on obedience of the woman in sexual relations with her husband inside the family as well as the priority of men to women in social and political positions outside of the family. I will discuss such juristic rulings concerning the representation of the feminine body in these texts and narrow them down theoretically to several statements in Foucauldian terms including: the criminalized body, the reproductive body, the lusty body, and the weak body.

As for Chapter Four, I have chosen to reverse the typical approach in theses of placing a methodology chapter before the analysis, because I believe that a researcher notices a phenomenon first and then seeks an appropriate methodology to theoretically organize her or his observations. In this chapter, I will uncover the discursive framework that I have used in the third chapter for reading the juristic texts. Inspired by Michel Foucault, I discuss how I comprehend Shi’a jurisprudence as a discourse that aims to distort the bodies and sexualities of women. I will
discuss the power of the discourse and the disciplinary functions of this discourse and how it regulates, monitors, and punishes bodies. Foucauldian notions established around the problem of the body, including discipline, monitoring, discourse, and biopower are discussed. I show how these notions assist me to recognize the discursive functions of language and texts in forming their subjects (women) in a specific way, which meets the satisfaction of political powers in Iran.

One of my concerns while working on my thesis has been the possibility of benefiting from a western thinker, namely Michel Foucault. I have wondered what kinds of possibilities and restrictions this framework may offer me. This is an essential question that no one has answered clearly, and it has been a place of controversy among social scientists even in Iran’s academia, including those who support the government and those who do not. To what extent are we allowed to consult a western thinker? No scholarship can be realized without standing on the shoulders of previous scholarship and we have had a long history of theoretical exchanges between east and west, especially in the medieval era. I believe that as long as researchers are sensitive about the contexts and cultural differences of two given societies, using any methodologies of east and west need not be a concern for us. As for my thesis, I have been aware of this issue, and I have used not the historical findings of Foucault, which are rooted in French society and the Victorian era, but the conceptualizations that he contributed to the social sciences.

Another issue that allows me to view through Foucauldian lenses the texts that I study without worrying about being entrapped in the orientalist view is directed to the Foucauldian perspective itself. The essence and aim of Foucault’s observations were to break any binaries, including man-woman, sex-gender, mind-body, east-west, which he considered to be discursively constructed. His framework was what Edward Said (1979), who inspired so much of
postorientalist and postcolonial scholarship, once said about his own work, namely that *Orientalism* was indebted to Foucault’s understanding of discourse and that he could not write about the orient without perceiving Orientalism as a discourse in a Foucauldian sense (Said 1979). I am also not the only one who has chosen the Foucauldian discursive framework and found it useful for my research. There have been a number of Middle Eastern feminist scholars who have benefited from the Foucauldian perspective (For example, Fatima Mernissi (1987); Fatna Sabbah (1984); Afsane Najmabadi (2005); Janet Afary (2009); Lamia Ben Youssef Zayzafoon (2005).

While working on my thesis, dealing with the texts and trying to make the texts as well as my argument understandable for my academic, mostly western readers, I realized that in every sentence I was writing, I have been challenged in my ambivalent subject position as an Iranian woman raised in Iran under the Islamic rulings, and my current position as a social science student in Canada. As an Iranian feminist, I am compelled to write about and scrutinize the oppressive and unjust laws and religious rulings about which I write with a hope of change and for a more fair society for my fellow Iranian women. On the other hand, by writing the thesis in English and in a western academic setting, I am concerned that I unintentionally reinforce the current stereotypes concerning Islam, Islamic countries, and Middle Eastern women. I am aware that criticisms of any developing nation can serve such stereotypes, which is to free poor brown women from aggressive, uncivilized brown men and rulers. Although I admit that the stereotypes have not been made without any evidence and hold a certain degree of truth in history, they mostly exaggerate as well as highly generalize what is happening in the Middle East, thanks to media propaganda. The question that strikes me constantly is how I should deal with my subject position according to which, on the one hand, women and religion are my foremost concern in
Iran and I would like to write about them. On the other hand, my research is in English and they cannot benefit from it. Most importantly, such research can strengthen what is called Islamophobia in North American and European countries. What is my foremost concern? Is it to combat the existed Islamophobia in North America or to struggle against the fundamentalist Islamic government and patriarchal cultural values embedded in Iranian society? This is a question about which I may never be certain, but, in the current situation, I believe that I lean towards scrutinizing the latter.

As a final note, I do not intend to do what Muslim jurists do, which is to extract percepts from juristic sources and validate the authenticity of the precepts. Nor do I do what Islamic feminists do, which is to provide egalitarian and non-misogynist readings and interpretations of juristic sources and propose another Islam, which is different from what the Iranian Islamic regime proposes. I approach the current and common juristic texts in Iran in order to examine their assumptions regarding the feminine body. Hence, it is not my concern to examine the truth-values and validity of the religious rulings; although I disagree with them, it is beyond the scope of this thesis to show my stance and distance from conservative or even feminist interpretations.
Chapter Two: The Development of Islamic Jurisprudence

Since the advent of Islam, jurists (faqih) of various schools (mad’hab) have developed a discipline called Islamic jurisprudence (fiqh) among Muslims to regulate their personal and social lives. This jurisprudence is based on the Divine law (Shari’ah), which is derived from primary sources, namely the Qur’an and Tradition (Sunnah). In this chapter, I will first discuss the difference between the Divine law and Islamic jurisprudence. Next, I will elaborate on the definition and sources of Islamic jurisprudence. Then, I will present a brief overview of the history of Shi’a jurisprudence, where I begin to develop my argument around the process of jurists taking political power in Iran’s political scene. I will show how the political and economic privilege of jurists (in general the clergy class) contributes to the development of Shi’a jurisprudence and the formation of specific juristic texts. Finally, the chapter will examine the development of the resalahs Amaliyeh (A Clarification of Questions) books written by Shi’a jurists, which are a new form of juristic text in Farsi.

Distinguishing the Divine law (Shari’ah law) from Islamic jurisprudence

To picture the difference between the Divine law and Islamic jurisprudence, one should consider the theological backgrounds of early Muslims more closely. As Wael-B Hallaq (2009) asserts:

On the basis of a comprehensive study of the law, the jurists came to realize that there are five universal principles that underlie the Shari’a, namely, protection of life, mind, religion, property and offspring. The reasoning was that the law has come down explicitly to protect and promote these five areas of human life, and that nothing in this

6 To the Islamic scholars, Tradition (Sunnah) refers to the specific words, habits, practices, and silent approvals of Prophet Mohammad (Nasr narrators in the course 1987). For details see page 23.
law can conceivably run counter to these principles or to any of their implications, however remotely (2009, 26).

It is, therefore, very important that the Islamic law practiced in Islamic countries ensures the protection of these five universal principles.

Hallaq (2009, 14-16) believes that Muslims, according to their theological assumptions, maintain the stance that there are some secrets in the world that can be deciphered by human reasoning. However, any attempt to decipher all the secrets of the world is in vain. This is the reason why Allah sent the Prophet Mohammad and required people to follow him. As Muslims claim, not only did Mohammad receive the sacred revelation (Wahy), which constituted the Qur’an, but his acts (Sunnah) have also provided guidance for his followers. The sacred revelation (Qur’an) and Mohammad’s acts are the two sources of the Divine law (Shari’ah).

Islamic jurisprudence which is derived from the Divine law, was subsequently established based on human endeavors to interpret these sources and implement them in the everyday lives of the people. According to a contemporary Iraqi jurist, Mohammad Baqer Sadr (2005), a legal discipline was necessary to “remove obscurity concerning the practical position before the divine law in every eventuality by establishing an argument for determining the [practical] position” (Sadr 2005, 35). The majority of the legal verses of the Qur’an are comprised of general contents and rules. Although there are some unchangeable rules in the Qur’an, many laws can be recognized as liable to change. For example, the Qur’an is only specific about five crimes: murder, theft, highway robbery, zina (unlawful sexual intercourse) and slanderous accusation. Concerning all other crimes, the Qur’an allows the community to determine crimes and penalties as far as they do not conflict with the Divine law. Similarly, the Qur’an provides only a brief account of ritual performances such as daily prayers, fasting, and
pilgrimage. Detailed instruction concerning such matters must be found through other sources (Kamali 2003, 35-36). If the Divine law concerning the daily aspects of people’s activities in the Qur’an had been self-evident, the discipline of jurisprudence would not have been necessary.

The word *fiqh* (jurisprudence) is an Arabic term meaning "deep or full understanding and comprehension". In the Islamic context, *fiqh* is the knowledge of the practical rules of the Divine law (Shari’ah) acquired from the detailed evidence in the sources (Kamali 2003, 12). In other words, “*fiqh* is a human attempt at knowing the Shari’ah, the divinely ordained ‘path’ which only God knows perfectly” (Kamali 2003, 7). The establishment of Islamic jurisprudence, which depended on human reasoning and interpretations, met no challenge, because Muslims never refuse the potential ability of human reasoning to interpret the world. Thus, the Qur’an and Sunnah have become the two main sources for leading human reasoning to understand the secrets of the world.

This tradition of interpretation became necessary, because the Islamic legacies were supposed to be transmitted to the next generations that were distant in time from the age of legislation. This distance resulted in the practical aspects of the rulings of the Divine law (Shari’ah) becoming ambiguous. Problems arose gradually and led Muslims to ask questions such as: how could Muslims trust in the authenticity of the *Hadiths*, which were narrated by the Prophet’s companions and not the Prophet himself? Furthermore, verses in the Qur’an with clear meaning are scarce. Accordingly, how could Muslims’ hearts be enlightened by the sacred hidden meanings of the majority of the Qur’an’s opaque verses? Facing such challenges and

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*7 Hadiths* are reports of the deeds and sayings of the prophet Mohammad and Twelve Imams (in the case of Shi’a Jafari mad’hab) by of history.
alleging the reliability of the faculty of reasoning led the early Muslims to establish the discipline of jurisprudence (Hallaq 2009, 16-17).

Scholars of the field as well as politicians identify the distinctions between the Divine law and Islamic jurisprudence very differently. Some even neglect the difference completely and use the terms interchangeably, often with ideological and political intention. Some put considerable emphasis on the fact that the Divine law and jurisprudence are two separate issues. This account is usually considered the bottom line of Islamic feminists as well as what is known as Religious Intellectuals in Iran who try to find a venue for democratic interpretations of Shari’ah law, by stressing its difference with current political and cultural Islamic jurisprudence and law. For instance, legal anthropologist, Ziba Mir-Hosseini, tends to scrutinize Islamic laws and jurisprudence by understanding them traditionally, historically, and sociologically. She argues that Islamic law and jurisprudence has been developed by the patristic society of Muslims, and that fiqh or Islamic jurisprudence is defined as Muslims endeavoring to extract laws from sacred texts (Mir-Hosseini 2010, 22-23). She addresses injustices imposed on women, saying that there is a difference between “Shari’ah (the ‘path’, found in the Qur’an and the Prophet’s practice) and fiqh (‘understanding’, the jurists’ efforts to deduce laws from these

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8 Religious Intellectuals in Iran belong to a long historical background, which is not part of this thesis. However, the common traits of all include their acknowledgment of reform in Islamic thought, the importance of civil society, human rights, as well as religious pluralism.
9 This is usually the main attempt of Islamic feminists to show the humanitarian and democratic potentiality of the sacred texts. For example, Mir-Hosseini, in her “Control and Sexuality” (2010), maintains that “a distinction between Shari’a and fiqh is crucial, from a critical feminist perspective, because it both engages with the past and enables action in the present; it enables the separation of the legal from the sacred, and to reclaim the diversity and pluralism that was part of Islamic legal tradition. It also has epistemological and political ramifications, and allows contestation and change of its rulings from within” (2010, 24). Similarly, Asma Barlas, in her “Believing Women in Islam: unreading patriarchal interpretations of the Quran” (2002), attempts to provide a reading within the framework of the Qur’an regarding the issue of gender equality and criticizes the reality of people’s misreading in regard to the Islamic holy sculpture.
textual sources). She argues that this distinction enables scholars to realize patriarchal laws not as the Divine law, but as outdated human jurisprudence. She therefore acknowledges Islamic jurisprudence to be “man-made juristic constructs” (2010, 23). Similarly, according to Khalid Masud, “Fiqh is not divine law that Muslims have a duty to implement. Fiqh is juristic law, humanly constructed to deal with times and circumstances. It can change when new times and circumstances emerge” (2009, 89).

Contrary to this view, which may be a reductionist viewpoint, Hesham Kamali brings the explicit words/meanings (Nass) of the Qur’an to our attention. Like Mir-Hossieni, he understands Islamic jurisprudence to be the jurists’ interpretation of Shari’ah, but he correctly stresses and demonstrates that this interpretation occurs mostly when we encounter verses of the Qur’an that have unclear and ambiguous meanings. The distinction between the Divine law and Islamic jurisprudence principally disappears when the Qur’an has clear and explicit words/meanings (Nass) (Kamali 2003).

To interpret the Qur’an or the Sunnah with a view to deducing legal rules from the indications that they provide, it is necessary that the language of the Qur’an and the Sunnah be clearly understood. To be able to utilize these sources, the mujtahid [Muslim jurists] must obtain a firm grasp of the words of the text and their precise implications …Normally the mujtahid will not resort to interpretation when the text itself is self-evident and clear. But by far the greater part of fiqh consists of rules which are derived through interpretation and ijtihad. Interpretation is primarily concerned with the discovery of that which is not self-evident (Kamali 2003, 85-86).

It seems that, according to Hesham Kamali, verses of Qur’an and hadiths with clear meanings do not need to be interpreted by jurists, since they are considered Nass (words with

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clear meaning). In such words, there is not much distinction between the Divine law and jurisprudence. As Kamali argues, one is permitted to interpret the *Nass* when one has warrants in Shari’ah (Kamali 2003, 90-92). This case is not taken into account by Mir-Hosseini, as she wants to juxtapose modern and Islamic values to show their compatibility in regards to women’s rights. She tends to disregard the unjust facets of the Divine law, the Qur’an, Tradition, or *hadiths*, by reducing them to expressions of the patristic characteristics of early Muslims societies. She stresses the fact that Islamic jurisprudence is nothing but jurists’ interpretation of Qur’an and Tradition. She believes that any unjust rules come from unjust jurists’ interpretation. She does not discuss that an interpretation comes into the picture only in the cases of ambiguity in the sources, including Qur’an, *Sunnah*, and *hadiths*. My thesis is focused on specific juristic texts where interpretation is involved.

As human interpretation makes significant contributions in extracting laws and rulings, such laws and rulings may change in accordance with the demands of time and place (Motahari 1981). In contrast to the Divine law (Shari’ah), Islamic jurisprudence is therefore not regarded as sacred, since different styles of interpretation (based on different sources, tools, and history) may result in different schools of thought (*Madhabs*). Based on their popularity among contemporary Muslims, there are five main schools of jurisprudence: Shafi’i (whose main followers live in Southern Asia, Eastern Africa, and Kurdistan); Maliki (which is now dominant among North

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12 Investigation into various interpretations of sacred Islamic texts in either juristic discourse or other discourses such as Islamic mysticism, philosophy, theology, and theosophy is quite interesting. However, it is not the focus of this thesis. In this thesis, I do not study various interpretations and evaluate the authenticity or predominancy of any given interpretation. What is important in such texts is the matter of the historical representation. As Edward Said asserts, “in any instance of at least written language, there is no such thing as a delivered presence, but a re-presentation, or a representation” (1979, 21).
African Muslims); Hanafi (which is the dominant madhab in Turkey, Syria, central Asia and parts of Egypt); Hanbali (which mainly has followers in Saudi Arabia); and Jafari (the dominant school of jurisprudence in Iran and among Twelver Shi’as of Iraq). The first four belong to the Sunni tradition of Islam, while the last one is Shi’a. In this thesis, Shi’a will refer to Jafari madhab, which is associated with the work of Imam Jafar al-Sadiq, the sixth Shi’a Imam. Shi’a jurisprudence is of a hierarchical nature. At the top of the hierarchy are Shi’a Imams (Sadr 2005). After the Islamic Revolution of 1979 in Iran, the Jafari School of jurisprudence became the legal religious authority; that is why the focus of this thesis is on Jafari madhab, rather than any other schools of Islamic fiqh.

Sources of Islamic jurisprudence

The sources of Islamic jurisprudence are significant in understanding the development of the discipline of jurisprudence. Islamic jurisprudence is intent upon interpreting the Divine law (Shari’ah) based on primary sources, namely the Qur’an and Tradition. There are various schools and sects in Islam, each with some unique features in their faith and jurisprudence. In Shi’a jurisprudence, there are four major common sources, namely the Qur’an, Sunnah (Tradition), ijma (consensus amongst scholars), and reasoning (Mohammad Ebrahim Janati, 2007, 38; Abbasali Amid Zanjani 2009, 12).

While the first two sources are considered to be infallible, the latter two ones are based on human reasoning and interpretations. Sunni jurists identify other elements, but because the focus of this thesis is on Shi’a jurisprudence, I will discuss them briefly in summery, before discussing them individually in greater detail.
The major source of Islamic jurisprudence from which the Divine law is extracted (Shari’ah), is the Qur’an. The second primary source is Tradition. The Qur’an provides Muslims with directions on how to practice a specific ritual such as ritual of purification (Wudu), which must be performed before practicing obligatory daily prayers (Salat). However, there are instances in which the instructions given by the Qur’an are not self-evident. The Qur’an does not clearly instruct Muslims how to engage, for example, in daily prayers (Salat) and fasting during the month of Ramadan. Thus, according to Muslims, further instructions for these duties are needed (Kamali 2003, 37). As a result, jurists may refer in such cases to Tradition of the Prophet Mohammad and extract the related regulations and laws based on his deeds. In most cases, the Qur’an and Tradition (Sunnah) are the basis for extracting precepts and laws.

Despite the guidance provided by the primary sources, there are various topics without precedent in the early Islamic era (Motahari 1981). For instance, the modern debates on women’s rights and the challenges of new technology or biomedicine create a requirement for other sources of jurisprudence to provide Muslims with guidance. Consensus amongst scholars (Ijma), the third source of jurisprudence, can help jurists extract the precise law in any given instance. The last source of jurisprudence is reasoning, which is consulted in case of ambiguity of primary sources, namely the Qur’an and Tradition. Based on the four sources, the jurist employs ijtihad13. Ijtihad refers to “independent reasoning” which is a reflective process conducted through the personal effort of Mujtahid14. Shi’a Muslims acknowledge the significance role of ijtihad, as they

13 Ijtihad includes all aspects of the process of extraction of law.
14 A Mujtahid is a highly learned jurist who is capable of ijtihad, i.e., reasoning about the law through applying complex methods and principles of interpretation (Hallaq 2009, 175)
appreciate human reasoning and intellect as legal sources that supplement the Qur’an and Sunnah in case of their ambiguity.

Before moving on to consider each source individually, it may be useful in the context of this discussion to point out the differences between Sunni jurisprudence and the corresponding Shi’a system. In Sunni jurisprudence, in addition to the Qur’an, Tradition, and historical consensus of community (Ijma), which are similar to those of Shi’a jurisprudence that I will discuss in detail, the jurists use other sources and methods to derive laws. The majority of Sunni jurists use analogy (Qiyas) as a source and method of extracting rulings from primary sources. As Hallaq illustrates,

The archetypal example of legal analogy is the case of wine. If the jurist is faced with a case involving date-wine, requiring him to decide its status, he looks at the revealed texts only to find that grape-wine was explicitly prohibited by the Quran. The common denominator…is the attribute of intoxication, in this case found in both drinks. The jurist concludes that, like grape-wine, date-wine is prohibited owing to its inebriating quality (2009, 25).

Because of the similarity between two given cases, a Sunni jurist transposes a ruling to the new case based on his knowing of the first case.

Sunni jurists may also use ‘to deem proper’ (Istislah), which is another source of inference. In istislah, the jurists evaluate the harms and benefits of a precept and its relation to the public interest. As Barlas comments, the principle of public interest comes into play in cases where public interest is not “textually specified” (2002, 73). Hence, when there is no clear answer about a given issue in the Qur’an, Mujtahids employ istislah to extract the rulings.

Sunni jurists may utilize ‘juristic preference’ (Istihsan) as a method as well. Istihsan expresses inclination for specific judgments in jurisprudence over other possibilities (Nomani and Rahnema 1994).
If a person, for example, forgets what he is doing and eats while he is supposed to be fasting during the month of Ramadan, *qiya*s dictates that his fasting becomes void, since food has entered his body, whether intentionally or not. But *qiya*s in this case was abandoned in favor of a Prophetic *hadith*, which pronounced the fasting valid if the act of eating was the result of a mistake (Hallaq 2009, 25-26).

The example shows that a jurist may prefer to use *istihsan*, and not *qiya*s in a given example.

Shi’a jurists reject deductive analogy as a source of Islamic jurisprudence, since it sometimes yields too many possibilities for any given law. In return, they introduce ‘reason or intellect’ as the source of extracting a precept or law from the Qur’an and Tradition which will be discussed further in the next section.

**Qur’an: The First Source of Shi’a Jurisprudence**

The word ‘Qur’an’ is a derivative of ‘*qara’a*’ in Arabic, meaning ‘reading’ or ‘recitation’. In Islamic context, Qur’an, as a proof of Mohammad’s prophecy, could be defined as “the book containing the speech of God revealed to the Prophet Mohammad in Arabic and transmitted to us by continuous testimony” (Kamali 2003, 22). Islamic scholars are unanimous that the Qur’an is the primary and major source of jurisprudence and that all other sources must be utilized in accordance with the instruction of the Qur’an (Kamali 2003). Some preliminary information about this book may be useful in this section.

Regarding the preservation of the Qur’an, it suffices to mention that during the lifetime of the Prophet Mohammad, he and his companions memorized the suras and verses of the Qur’an as they were revealed piece by piece during twenty-three years (Kamali 2003). The text was written on convenient materials, including flat stones, wood, and bones. It was not until the battle of Yamamah, in December 632 C.E, at the time of the first Caliph, Abu Bakr, that the texts of the Qur’an were collected and organized. Since seventy of the memorizers of the Qur'an were killed
in this battle, the first Caliph, Abu Bakr, employed Zayd b. Thabit, the scribe of the Prophet, to collect the texts from every region of the Islamic lands. This task continued to the time of the second Caliph, Omar bin Khatab. Under the third Caliph, Uthman, all the different editions of the Qur’an were collected and destroyed, and one final valid version was presented to the public, which is the one in existence today. This mission of consolidation was accomplished with the help of Zayd b. Thabit and Ali (a cousin of the Prophet and the first Imam of the Shi’a School) (Kamali 2003, 25).

Most of the legal and practical contents of the Qur’an were received by the Prophet Mohammad after his migration to Madinah. These verses are focused on the regulation of daily life in the city of Madinah, and included numerous legal rules, in contrast to the verses revealed during his stay at Mecca, which were concerned with belief in the oneness of God, the prophetic authority of Mohammad, and disputations with unbelievers and their invitation to Islam (Kamali 2003, 25). These legal verses from the Mecca period of the Qur’an form the basis for Islamic jurisprudence. There is no agreement among scholars about the exact number, but roughly 350 legal verses can be found in the Qur’an. Some parts of these verses are aimed at repealing objectionable customs of the Arabic tribes of the pre Islamic period including infanticide, usury, gambling and unlimited polygamy, while other verses seek legal enforcement of Qur’anic rules by determining some of the penalties (Rahim Sir 1911).

While acknowledging an absence of consensus among scholars, we can roughly divide the legal verses of the Qur’an into six categories (Kamali 2003, 27). First, approximately 140 verses of the Qur’an are concerned with devotional matters like prayer, fasting, pilgrimage, and charities. Second, roughly 70 verses are about marriage, divorce, custody of children, fosterage, paternity, inheritance, and bequests; third, there are nearly another seventy verses devoted to
commercial transactions, including sales, leases, loans, and mortgages. Fourth, at least thirty verses discuss crime such as murder, adultery, and false accusation. Fifth, approximately thirty verses are concerned with justice, equality, evidence, consultation, and the rights and obligations of citizens. Finally, ten verses aim at controlling the relations between the poor and the rich and discuss the rights of workers.

The generality of the Qur’anic law led to the establishment of a unique relationship between the Qur’an and Tradition (Sunnah) in the course of Islamic jurisprudence. Since some legal parts of the Qur’an are brief and not self-evident, the Tradition of the conduct and speech of the Prophet Mohammad and twelve Imams (in case of Shi’a) are supposed to provide Muslims with further and sufficient details of the Divine law (Shari’ah) (Kamali 2003, 35 and 169). In case of the conflict between the law extracted from the Qur’an and the law extracted from the Tradition, the authenticity of the tradition must be doubted and the Qur’anic instruction should be considered paramount. This is the instance in which Islamic jurisprudence and the jurist play a significant role in extracting rulings from the Qur’an and Tradition. Their task may concern studying the primary sources (the Qur’an and Tradition), but they endeavor to extract new messages and rulings in accordance with the unique demands of each era. This task is made possible by the fact that the Qur’anic suras mostly command people in general terms, so these commands can be interpreted in a variety of circumstances (Kamali 2003). In the instance of a disagreement among jurists in the use of the Qur’an and Tradition simultaneously, other sources of jurisprudence can be helpful, including consensus among scholars and the reasoning of the jurist. I will discuss each of these sources later on in this chapter.
**Tradition (Sunnah): The Second Source of Shi’a Jurisprudence**

Islamic jurists unanimously consider the ‘Tradition’ (*Sunnah*) as the second primary source of Islamic jurisprudence. Tradition is the English translation of the Arabic word ‘Sunnah’ literally meaning “a clear path”. This word connotes a normative practice or an established course of conduct. To Islamic scholars, the Tradition of Mohammad refers to his specific words, habits, practices, and silent approvals. Mohammad emphasized the authenticity of Tradition along with the Qur’an. As he maintained, “I left two things among you. You shall not go astray so long as you hold on to them: the Book of Allah and my Tradition (Sunnati) [*Sunnah*]” (Kamali 2003, 48).

*Hadith* is an important part of the Tradition. According to the Concise Encyclopedia of Islam, “a hadith is a saying or an act or tacit approval or disapproval ascribed either validly or invalidly to the Islamic Prophet Mohammad” (Newby 2002).

Ahmed Souaiaia also describes the difference between the Qur’an and *hadith* as follow:

Muslims believe that the Qur’an is the revealed Word of God, which scholars and ordinary Muslims memorize and recite verbatim (recite it in its entirety or selected parts of it). The *Hadith* on the other hand, is God’s nonverbatim revelation to the Prophet (meaning is revealed but the verbalization of any one tradition is the Prophet’s) (2003, xiii).

All major Islamic schools, including Sunni and Shi’a, rely on different *hadith* collections. *Hadith* has a distinct connotation from Tradition. Unlike Tradition, *hadith* is mostly defined as a narration of the conduct and sayings of Mohammad. However, it is usually used interchangeably. “*Hadith* and Tradition imply similar meanings, which are the sayings and actions of Mohammad in addition to the conduct of the twelve imams in Shi’a Schools” (Hasan 1970).
According to al-Shafi’i, Tradition must always be derived from an authentic hadith. There is no Tradition outside the hadith (Kamali 2003, 50).

Islamic scholars and jurists consider there to be two major aspects of a hadith: the text of the report (matn), and the chain of narrators (isnad). The former is the actual narration, whereas the latter is the documentation of the route by which the report has been transmitted. This chain is a chronological list of the narrators, each reporting the name of a specific narrator from whom they heard the hadith. This chain continues to the original narrator of the text, along with the text itself (Nasr 1987). Islamic scholars are agreed that there is an extensive amount of forgery in hadith literature. Therefore, knowledge of the authentic narrator seems necessary (Kamali 2005, 75). This process is a critical aspect of hadith studies, which aims at distinctions between the authentic hadith and forged ones.

In hadith studies, there are various classifications regarding a hadith. Islamic jurists and Islamic scholars distinguish between three types of hadith, namely authentic (sahih), good (hasan), and weak (da’if), based on the chain of narrators (Sardar 1979). Islamic scholars of different schools may not be in an agreement in regard to which of these three groups a given hadith belongs.

There is also a classification for Tradition, which is the distinction between non-legal Tradition and legal Tradition. The former refers to the daily conduct and activities of Mohammad such as the way he ate, slept, dressed, and other behaviors. Such acts have no importance in the prophetic mission. Therefore, this kind of conduct is not included in the Divine law (Shari’ah) and has no authority in constituting legal norms (Kamali 2003). As Kamali states, “according to the majority of ulema [jurists], the Prophet's preferences in these areas, such as his
favorite colors, or the fact that he slept on his right side in the first place, etc., only indicate the permissibility (ibahah) of the acts in question” (2003, 53). On the other hand, legal Tradition refers to Mohammad’s activities that are part of the Divine law (Shari’ah). Mohammad’s sayings and acts as the messenger of God, head of state, and a judge form the legal Tradition. Regarding his role as the messenger of God, his acts might establish new laws, yet in accordance to the Qur’an. Regarding his role as the head of state, decisions concerning allocations and expenditure of public funds, military strategy and war, appointment of state officials, distribution of booty, and signing of treaties were made by the Prophet Mohammad. Such decisions can be regarded as the part of the legal tradition. Regarding his role as a judge, he judged some disputes in his time that generally are divided in two parts. The first concerns claims, evidence, and factual proof, while the second is related to the final judgment. As the former is situational, it is not a part of the general law. In contrast, the later creates general law while it does not bind an individual to act on it without the permission of judges (Kamali 2003, 56-58).

Consensus among Scholars (Ijma): The Third Source of Shi’a Jurisprudence

Consensus (in Arabic, Ijma), which refers to the third source of jurisprudence in the Islamic tradition, means the agreement of a community on a particular matter. As Hallaq argues,

Consensus was determined in a back-projected manner, namely, when jurists looked back at earlier generations and observed that there was no disagreement amongst them on a particular point of law. Juristic disagreement, however, was the norm, whereas rules subject to consensus were relatively few. While a mujtahid was required merely to know the cases subject to consensus, the hallmark of his ijithad was intimate knowledge of the reasons for juristic disagreement (an intellectually demanding field of enquiry) (Hallaq 2009, 172).
Ijma, thus, is defined as an agreement of religious references (Mujtahids), in a given age on a particular law.

**Ijtihad: Expending One’s Effort**

Lexically, the word *ijtihad* is a derivative of ‘Jahd’, meaning ‘expending one’s utmost effort to carry out some task’. *Ijtihad*, refers to the process of extraction and interpretation of precepts from the Divine law by Shi’a jurists. “The contemporary understanding, shared widely by formally trained Islamic jurists, defined *ijtihad* as an intellectual tool that seeks to articulate Islamic law about issues on which the Qur’an and Tradition are decidedly silent” (Muqtedar Khan 2007, 501). As time went on, the employment of this source in Islamic jurisprudence became more and more necessary. As the degree of obscurity of the text (the Qur’an and Tradition) increased by distancing from the age of the Prophet Mohammad and the Imams, the need for *ijtihad* became greater. The need for a general principle for dealing with the ambiguities of the texts was more keenly felt. *Ijtihad* was one of the principles that could be helpful in clarifying the text.

In Islamic jurisprudence, the Sunni legal school first used *ijtihad* to pinpoint the instances in which there were no specific rules in the Qur’an or Tradition regarding a certain eventuality. In this sense, *ijtihad* means personal reasoning of the jurist when no proof text is found. The jurist seeks inspiration from a current proof text from which to build his argument concerning any given issue. In this way, the first meaning of *ijtihad* was formed in which it was considered as the fourth source of Islamic jurisprudence (Sadr 2005). On the other hand, Islamic scholars have criticized this meaning of *ijtihad*, since it contains no limitation for employing this source as the basis of a law. If the jurist were asked for the sources of his extracted ruling, he would offer his personal *ijtihad* as an answer and as his way of thinking. As a result, jurists developed a
second meaning of *ijtihad* in which *ijtihad* is the process of derivation of rulings from the jurisprudential sources. In this new conceptualization, considering *ijtihad* as the fourth source of jurisprudence is no longer permitted. Jurists must base their argument on the Qur’an and Tradition rather than personal *ijtihad* (Sadr 2005). Even for the second meaning, some limitations were imposed by several jurists, such as al-Hilli\(^{15}\), who confine this source to particular usage. The scope of *ijtihad* later widened to the point that nowadays *ijtihad* includes all aspects of the process of extraction of law (Sadr 2005). As *ijtihad* becomes synonymous with the process of extracting law, ‘deductive analogy’ (*Qiyas*) in the Sunni school and ‘reason or intellect’ in the Shi’a School are considered the fourth sources of the Islamic jurisprudence.

Abolqasem Fanai defines *ijtihad* as a “cultural translation” (2014, 490). He criticizes the common understanding of *ijtihad* and what jurists practice today as *ijtihad*. He contends that in common *ijtihad* today, wrongly, the “essence” of the religion is not separated from its “accidents”; the “absolute” and “meta-historical” religion is not distinguished from the “adopted” and “historical” religion. He believes that in our [Muslim] *ijtihad* today, the religious texts are “literally translated [interpreted]” rather than “culturally” (2014, 489-490).

**Reasoning: The Fourth Source of Shi’a Jurisprudence**

The discussion of reasoning\(^{16}\), its importance, usage, and limitations has been a place of controversy in the history of Islam. Some jurists understand reason as human intervention in the legislation of Shari’ah that needs to be confined, restrained, and cautiously used. However, few

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\(^{15}\)Jamal ad-Din Hasan ibn Yusuf ibn 'Ali ibn Muthahhar al- Hilli (1250-1325) was a Twelver Shi’a theologian and religious reference.

\(^{16}\)By reasoning, some interchangeably use “theory of *ijtihad*”, as it includes the use of the human faculty of reasoning and human interpretation in extracting rulings from the texts.
believe that the faculty of reason can be of great usage especially for the cultural and contextual compatibility of the laws. The majority, however, maintain that reasoning can be used in cases where the sources are silent. Muqtedar Khan critically discusses such a dominant assumption:

I think that the theory of *ijtihad* is also an implicit theory of reason. It does not completely acknowledge the critical function of reason in cognition and understanding. Indeed, it is one of the reasons why reason came to be seen as an alternative to revelation by later Muslim scholars. As if the sacred texts and reason are two different sources of truth, the former infallible and the latter imperfect. Reason is invoked only if texts are silent. And if the texts have spoken, then reason must be silent17 (Muqtedar Khan 2007, 503).

The jurists do not “realize that texts are inaccessible without reason. Texts can speak only through reason and to reason” (2007, 504). Since it is said that the door of *ijtihad* is open in Shi’a, Shiites claim that reasoning and human interpretation is more acceptable and used in their jurisprudence, compared to the Sunni counterpart, which limits reason to an analogical reasoning. However, I maintain that reasoning has a shaky status in both schools. Reasoning does not own an independent and unconditioned status in Islamic jurisprudence, nor is it recognized as an essential cognitive tool.

**The Content of Islamic Jurisprudence**

**Categories of Human Behaviour in Islamic Jurisprudence**

According to the Qur’an, Allah is “the Lord of the Day of Reckoning”, which makes it vitally important to know the way that Allah reckons the acts of people. After a long historical dispute, Muslim jurists have agreed on five categories in order to classify human deeds. These five categories might be appropriate for any legal proposition that expresses the ruling that

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17 He is sarcastically criticizing the jurists who have such an understanding of reason which is imperfect and is of usage only where the sacred text is ambiguous. He argues, reason needs to be used in the whole process of jurisprudence (*Ijtihad*).
evaluates people’s actions in terms of morality (Sadr 2005). There are five categories of human conduct in Islamic jurisprudence (Horrie and Chippindale 2010): First, there are obligatory (Wajib) acts, including five daily prayers, fasting, obligatory charity, and the pilgrimage to Mecca. Second, there are forbidden (Haram) acts, including transgressing from certain Muslim dietary (such as prohibition of wine and pork) and clothing restrictions (hijab or body coverage). These behaviors are both sinful and criminal. Third, there are permissible (Mubah) acts, including all behavior that is neither discouraged nor recommended, neither forbidden nor required. Fourth, there are recommended (Mustahabb) acts, including proper conduct in matters such as marriage, funeral rites, and family life. Finally, there are discouraged (Makruh) acts, including behaviors that are not sinful per se, but are considered undesirable among Muslims.

“The two extremes, namely wajib and haram, incorporate legal commands and prohibitions. The rest are largely non-legal and non-justiciable in a court of law” (Kamali 2003, 40).

**Fields of Islamic jurisprudence**

There are several topics covered in Islamic jurisprudence (Horrie and Chippindale 2010), such as:

- Hygiene and purification laws, including the manner of cleansing and ritual purification.
- Economic laws including annual almsgiving, religious endowment, the prohibition on interest, as well as inheritance laws.
- Dietary laws, including the ritual slaughter of animals.
- Theological obligations, including pilgrimage, and funeral prayers.
- Marital jurisprudence, including the marriage contract, and divorce.
• Criminal jurisprudence, including fixed punishments, discretionary punishment, retaliation, blood money, and apostasy.
• Military jurisprudence, including jihad, and rules regarding prisoners of war.
• Dress code, including hijab.
• Other topics, including slavery, customs and behavior, and the status of non-Muslims.
• From these nine categories, I will focus on criminal jurisprudence, marital jurisprudence, hijab, and slavery.

**A Brief Overview of the Formative Years of Shi’a Jurisprudence**

In the final component of this background chapter, I will briefly explain the historical reasons why Shi’a jurisprudence was created and established. I will also discuss the reason why a new genre of jurisprudence, resalah, was formed in Shi’a jurisprudence.

Shi’a jurisprudence was formed after Sunni jurisprudence, mainly because of the physical presence of the sacred Imams who were the leaders of the Shi’ites community after the Prophet Mohammad[^18]. The presence of the leaders (Imams) as a reliable source of interpreting the Qur’an and Sunnah caused Shi’ites not to become engaged in the discussion of interpretation and the need for establishing the discipline of jurisprudence. As Hossein Modarressi asserts in his *Crisis and Consolidation in the Formative Period of Shi’ite Islam*, unlike Sunnis who spent considerable efforts to understand the Qur’anic verses and apply them to unfamiliar situations, Shi’ites tried to gather more and more hadiths from Imams for future generations (Modarressi

[^18]: The division between Shia and Sunni is traced back to the issue of the succession of the person who was supposed to take over the leadership of the Muslim community after the Prophet’s death. Shiites believed holy Imams, starting from Imam Ali, are supposed to receive this position. Sunnis agreed that three Caliphs (Abu Bakr, Omar Bin Khabab, Uthman) are successors.
That is why, by the time of the Great Absence of Imam Mahdi (892–? CE), the Shi’a collection of *hadiths* exceeded four hundred books (Gorji 1996, 119).

There is no trace of Shi’a jurisprudence in the history of Islam prior to the era of Imam Mahdi, as all inquiries were directed to the physically present Imams, Modarressi argues (2007). Imam Hassan Asqari’s departure caused a great crisis among Shi’ites around the issue of his succession, as the status of Imam Mahdi (potentially the next Imam) was ambiguous and no one knew if he was alive or not. According to Modarressi’s valuable research on the position of Imams in Shi’a history, the position of the Imam was tied to financial resources from the very beginning. Modarressi claims that huge amounts of money from all over the Muslim worlds were given to the Imams annually. On the other hand, some Shi’a claimed at the time that the son of Imam Asqari, Mahdi, had to be “veiled” by God’s order. The Shi’a did not want to lose financial resources by announcing that the Imam Hassan Asqari was the last Imam. No one was also able to take the position of Imam after Imam Asqari, as the missing Mahdi was not physically among Shi’ites. As a result, many Shi’ites lost their faith as the crisis of a successor reached its climax and Shi’a Islam was about to be wiped from Islamic history. At that time, new players were introduced into the historical drama of Shi’a, who are today known as *hadiths* narrators. They became the Shi’a saviors and assisted Shi’ites in rearticulating their beliefs.

In this critical period in which Shi’a fought for its survival, the narrators, who used to gather *hadiths* when Imams were alive, re-circulated an old *hadith* in Shi’a society, which

\[\text{\footnotesize \textsuperscript{19} The last (twelfth) Imam of Shi’a. He is considered the Shia Messiah.} \]
\[\text{\footnotesize \textsuperscript{20} The eleventh Imam; Imam Mahdi’s father.} \]
\[\text{\footnotesize \textsuperscript{21} Mongol Bayat similarly argues, “The olama did derive their income from their… religious endowments, commercial investments, legal fees, religious taxes, and their followers’ generous donations in cash and property” (1991, 14).} \]
\[\text{\footnotesize \textsuperscript{22} Reports, accounts, and narratives of Muhammad and eleven Imams afterwards.} \]
resuscitated Shi’a as it was about to disappear. According to this hadith, which was attributed to the Prophet Mohammad, there are only eleven descendants of Ali, who are appointed as Imams, and the last one will be concealed until the very Last Day. This hadith enjoyed broad acceptance by Shi’a and helped them re-build their community. This success gave the narrators a more stable position among Shi’ites. Gradually, these narrators became the “interpreters”, because the narrators did not have the opportunity to contact any infallible Imams to ask the daily questions of the believers. Consequently, Shi’a began to know and understand the Qur’an and Sunnah through such interpreters. In this event one can see the birth of Shi’a jurisprudence and a jurist class (Modarressi 2007).

The first Shi’a religious scholar who tried to legitimate this “unwanted child” of jurisprudence was Ibn-Ghobbeh. In his book, Naghz Fi Elesteshhad, [Rejection of Affidavit] he introduced a new ground for Shi’a, which after its development was called jurisprudence. For the first time, he pointed out that even in the era of the Imams, it was not necessary to consult the Imams about daily religious obligations. He argued that based on the criteria in the Qur’an and Sunnah, Muslims should be able to figure out the proper rulings in any ambiguous cases they

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23 The official Iranian claim and narration about the emergence of Shi’a jurisprudence is argued differently from the narration presented here. Current Shi’a Ulama in Iran argue that ijtihad was started during the era of the Imams, specifically in the time of Imam Baqir and Imam Sadiq (the fifth and the sixth Imams of Shiite) and not after the Occultation of Imam Mahdi (the twelfth Imam of Shi’a), as I argue here. They said such, as at that time Mujathids were sent to remote areas in which Shiites did not have direct access to the Imams. For instance, Amid Zanjani, an Iranian Ayatollah, claims that Shi’a scholars like Aban bin Taqlib and Muhammad bin Muslem were among the Mujahids who were elected by the imams to answer the religious questions of the people in remote areas (2009, 35-40). However, this argument is not correct, as these people originally were trustworthy narrators of hadiths and not interpreters with systematic methods of ijtihad. Aban bin Taqlib and Muhammad bin Muslem are also mentioned in Vasael a—Shiite, one of the most prestigious Shi’a hadith books, as the reliable sources of narrating hadith and not interpretation (Mohammad Hassan Horr-e Amoli 1985). I would argue that such a narration of Ayatollahs concerning the advent of Shi’a jurisprudence, which is linked to the fifth and sixth imams, is due to the strong tendency of Ayatollahs to present their position as sacred and closely connected to the imams.
might face (Modarressi 2007). This revolutionary claim is considered the first step toward the formation of Shi’a jurisprudence, as it is the justification for interpretation by people who are outside of the infallible divine institution of Imams (which succeeded the institution of the Prophethood). After Ibn-Ghobeh, it took over a century for the narrators to change their position from the narrators to the interpreters or Mujtahids. This change helped Shi’a keep its financial sources in hand, receiving support from Shi’ites all over the Islamic world. Such financial sources have also been very important for their continuing survival, as they continue to receive a considerable amount of money in the forms of *Waqf*24, *Khums*25, and *Zekat*26.

The first Mujtahids in Shi’a history are Ibn- Joneid Eskafi and Ibn-Aghil Amani in the late ninth and early tenth centuries. Sheikh Mofid (948-1022 CE) and Seyyed Morteza contributed to Shi’a jurisprudence in the tenth and eleventh centuries. Finally, Shi’a jurisprudence flourished and its resources were widely acknowledged, due to the great contribution of Sheikh Toosi (996-1022 CE). Since most of these Mujtahids were from Baghdad, their school was known as the Bagdad School. After Sheikh Toosi’s departure, there was no other innovative Mujtahid in Shi’a for more than two centuries. This decline was accelerated by the Mongol attacks on Iran (1219 CE) and Iraq (1258 CE). Despite the decline, the attack resulted in the emergence of a Shi’a jurisprudence movement in Hillih, Syria. This development happened in Syria, because Holagu Khan gave a safe-conduct to the people of Hillih. Hence, they were protected from the worst consequences of the bloody attacks of the Mongols, and the

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24 The inalienable religious endowment, usually in the form of a building or a land.
25 Refers to a religious obligation to contribute one-fifth of a certain type of income to Imams and Mujtahids to spend for charity activities.
26 One of the Five Pillars of Islam. It is the practice of charitable giving by Muslims, based on accumulated wealth, to the Imams and Mujtahids.
Hillih School enjoyed a peaceful environment for its flourishing. During the decline in most parts of the Islamic lands, the Mujtahids remained the followers of Sheikh Toosi.

Ibn-Edris Hilli (circa 1143 CE) from Hillih, the new capital of Shi’a jurisprudence, was the first Mujtahid to scrutinize all previous Mujtahids, including The Great Sheikh Toosi. Gradually, the Hilli School, as the most important jurisprudence movement in the Shi’a world, with figures such as Mohaqiq Hilli (1277 CE), Allameh Hilli (1326 CE), and Fazil Meqdad (1425) emerged in Hilliah and Jabal Amel. Most of the prestigious Shi’a Mujtahids such as Muhammad Jamaluddin al-Makki al-Amili or Shahid Awwal (1334-1385 CE) Zayn al-Din al-Juba'i al'Amili or Shahid Thani (1506-1558 CE)27 belonged to this period (Gorji 1996, 227).

The next transformation of great significance in Shi’a jurisprudence was the emergence of the Akhbari Movement and school of theology in the sixteenth and seventeenth centuries. Akhbarism, raised and developed by scholars such as Mohammad Amin Astarabaadi (?-1636 CE), Muhsen Feyz Kashani (?-1680), Al-Ḥurr Al-Amili (1624-16893 CE), and Seyyed Hashim Bahrani (?-1707 or 1709 CE), abolished the position of Mujtahids in jurisprudence and *ijtihad*. These scholars were originally from different cities such as Kashan in Iran or Hillih in Syria or even from Bahrain. They all shared the same doubt about the faculty of human reasoning, considering it to be misleading. As Mangol Bayat says, “It [Akhbarism] persisted in viewing the entire community of believers as followers (*moqalled*) of the Imam's teachings and argued that the Traditions of the Prophet and the Imams provide sufficient guidance for understanding”

27 Shahid Awwal is the author of *Al-Lum'ah ad-Dimashqiya* (The Damascene Glitter) and Shahid Thani wrote glossary on it, which is known as *ar-Rawda-l-Bahiyah fi Sharh allam'a-d-Dimashqiya* (The Beautiful Garden in Interpreting the Damascene Glitter) These books are considered the important sources of semi-deductive Shi’a jurisprudence, which are the texts that I refer to in this thesis on the discussion of the feminine body.
(1991, 11). They believed that the Qur’an and *hadiths* are sufficient for Muslims: further interpretations were not needed. Consequently, Shi’a religious scholars turned to their old role as “the narrators”. According to the Akhbaris (i.e. people who belonged to the movement), this role was the only calling of Shi’a scholars, while the Mahdi (the Shi’a “Messiah”) was on the Great Absence.

The advent of Akhbari in Iran coincided with the Safavid dynasty, which ruled Iran in the sixteenth and seventeenth centuries. The Safavids had a good relationship with the Mujtahids and provided them with opportunities to become involved in political affairs and institutions. It was a mutual interest, as they offered the Mujtahids more political influence, in turn for the legitimism of their dynasty. Hence, they communicated well based on this mutual interest. Mujtahids encouraged people to trust the Safavid rulers and introduced them as the successors and inheritors of the absent “veiled” Imam, the Mahdi. Ali Karaki was the first Mujtahid to assert that the Safavid rulers are the inheritors of the Imams. It is argued that he is the founder of political Shi’a Messianism (Khalaji 2010, 147). Safavid rulers as well as Mujtahids did not welcome the Akhbari Movement, since Akhbaris were opposed to the Mujtahids, *ijtihad*, and the discipline of jurisprudence, as human endeavors to interpret the revealed texts. As a result, Mujtahids, with the support of the Safavid authorities, scrutinized the Akhbaris harshly. Akhbarism, as a result, declined and lost its reputation among the people. Mujtahids empowered and consolidated their own position as the only authoritative religious players in Iranian Shi’ism.
This mutual and supportive relationship continued to the next rulers of the Qajar era. Nineteenth century Shi’a jurist, Mollah Ahmad Naraqi's (d. 1829), is said to have a supporting relationship with the Qajar monarch. As Bayat (1991) writes,

Naraqi enjoyed Fathali shah's patronage, receiving royal appointment for the administration of a mosque and its endowments in Kashan. He fully supported the Qajar monarch, issuing upon request a fatwa (religious pronouncement) declaring jihad (holy war) against the Russians when Iran's forces were waging war against its northern neighbor.

The importance of the role of Mollah Ahmad Naraqi in Shi’a history is to propose and introduce the idea of velayat-e faqih (Governance/Authority of the Jurist) for the first time. As Bayat asserts,

Naraqi insisted on the absolute authority of the faqih over all issues pertaining to the personal life of the believer, and not just over matters of litigation, Koranic punishment, marriage, divorce, inheritance, and property settlement. In his lengthy discussion of the faqih's authority, Naraqi referred to the masses and the subjects as the moqalled, who needed to follow the ruling of the faqih since they were ignorant and incapable of discerning the truth by themselves. He did not claim for the faqih the right to administer what traditionally fell under orf jurisdiction (Customary law). Naraqi's concern with establishing the faqih's authority in shar'i matters left no room to discuss the relation of such a socially powerful faqih with the state.

The relationship between Mujtahids and states started to become shaky in Pahlavi era (1925-1979), since Reza Shah and, subsequently, his son Mohammad Reza Shah, had a tendency to build their legitimacy on Iranian characteristics of the culture and less on Islamic ones and developed a distant between themselves and the clergy class. They developed westernized

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28 By and large, and similarly, such a relation between Ulama and state is analyzed by Hamid Algar (1969), and Amir Arjomands (1984).
29 Similarly, Moojan Momen points out that “it is interesting to note that Khumayni cites Mulla Ahmad Naraqi and [his student], Shaykh Muhammad Na’ini, as two previous authorities who held a similar view to himself regarding the political prerogatives of the ulama. These two clerics, even if they did hint at this in their writings, did not make it the central theme of their political theory as Khumayni does” (1985, 196).
modern values in Iran and stepped forward to eliminate Islamic aspects of Iranian culture in favor of Iranian aspect. Some examples of such a move were changing the Iranian solar calendar from Hijri (the migration of the Prophet Mohammad from Mecca to Medina) to the coronation of Cyrus the Great and the glorious celebration of 2500 years of the establishment of the Persian Empire in 1971 (Dabashi 1992, 10). As Dabashi argues (1992, 10) Shi’ism and the Islamic revolution of 1979 were reactions against the anti-Islamic design of the Pahlavi regime and “over-Persianization of Iranian political culture at the expense of its Islamic component”.

The Emergence of Resalah as the New Paradigm in Shi’a Jurisprudence

In the 7th century, Islam came to Iran, when the Umayyad Arabs ended the Zoroastrian Persian Sassanid Empire. The founder of the Safavid dynasty, Shah Ismail, unified Iran in 1501, after centuries of foreign occupation and short term native dynasties. Shah Ismail announced the state religion to be Twelver Shi’ism. Iran is the only country in which the official religion is Shi’a (Mir-Hosseini 2010, 85).

The writing of juristic books in the form of resalah began during the Safavid dynasty and developed further in the Qajar era. Not only did Safavid authorities endorse *ijtihad*³⁰ to find its place increasingly and progressively, but they also encouraged Mujtahids to write in Farsi, as the majority of people in Iran could not read Arabic. Some of the most prestigious Mujtahids’ Farsi books were written in the late sixteenth and early seventeenth centuries. Shaykh Baha’e’s *Jame’e Abbasi* (1547-1621 CE) and Majlisi’s *Lavame’e Sahebqarani* (1616-1698 CE) are the first Persian books written by the Mujtahids in this period.

³⁰ It is an Islamic legal term that means “independent reasoning”. *Ijtihad* is recognized as the decision-making process in Islamic law through personal effort of Mujtahids.
Mohammad Baqer Majlisi, one of the high status Mujtahids of the Safavid era, is an important example of how the Safavid rulers endorsed Mujtahids developments to practice their ideas. Known as the “Second Majlisi”, Mohammad Baqer Majlisi, is one of the founders of present day Shi’ism. Sultan Hussein, a Safavid ruler, celebrated him as Sheikh- Ul-Islam (the chief leader of Islam) and provided him with an influential social status. Majlisi is a turning point in history of not only Islamic jurisprudence, but also Shi’ism. He assisted the Mujtahids to establish a highly influential status in the society that led to overwhelming power for the Mujtahids and their designated social roles after the seventieth century. Majlesi had an ambiguous status. Some researchers count him as Akhbari, because he gathered many hadith books. However, it should be considered that he was the author of Lavame’e Sahebqarani, which is considered to be the first systematic juristic book in Farsi. In this work, he gathered many hadiths; mostly from Man la yahzaroh-al-faqih [who do not have access to the Mujtahids], which is one of the most significant and authentic hadith books in history of Shi’a, and used his own methods, such as philology, implications, and contradiction, to interpret the hadiths. Accordingly, he should be acknowledged as a Mujtahid. He also did his best to empower the Mujtahids in the political hierarchy of power. Counting him as an Akhbari, therefore, seems to be wrong.

One must analyze the emergence of resalah in this context, as Mujtahids needed to write jurisprudence books in Farsi in order to develop their social, political, and economic status. By choosing Farsi as the language of resalaha, the Mujtahids were be able to spread their ideas more easily, as the majority of Iranians could not read in Arabic.
Within a century after the idea of *taqlid*\(^{31}\) was formed, Mujtahids such as Sheikh Jafar Najafi, Mulla Ahmad Naraqi, Seyyed Ali Tabataba’e, Seyyed Mohammad Baqir Shafti, Sheikh Mohammad Hassan Najafi and others developed the writing of juristic books in Farsi during the Qajar era. Such books are known as “*resalah*”. A *resalah* (Arabic for "Pamphlet" or "Book"), also *Tozih al-masaael* (Arabic, meaning “A Clarification of Questions”), is a book written by a Shi’a Marja\(^{32}\) that contains his practical rulings dealing with purity, marriage and sexuality, worship, business and trade. Each of these orders presumes a particular view of the body and sexuality.

One should consider the Shi’a *resalahs* as belonging to non-deductive jurisprudence (*fiqh-e qeyre estedlaali*), which means they are prepared for the masses, rather than for experts. These texts do not include any technical debates concerning the way a particular precept (*hukm*) is derived from the original sources. In addition to non-deductive jurisprudence (*fiqh*), there are also semi-deductive (*nimeh estedlaali*), and deductive (*estedlaali*) jurisprudence. Neither of these forms of arguments/books belongs to *resalah*. Contrary to deductive and semi-deductive jurisprudence, non-deductive jurisprudence contains creeds (*fatwas*) that have to be obeyed, but no argument is given for their validity. For example, drinking wine is prohibited in Islam. The approach of *resalah*, as a non-deductive juristic text that is written for the public, is to provide the reader with rulings and any given subsequent sentences without mentioning the process of deducting and extracting a given ruling. In this example, *resalah* may argue that drinking wine is

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31 *Taqlid* (which in Arabic means religious emulation) takes place when a *moqalled* (a follower) follows a Marja’s commands with regard to religious issues. Within this context, *resalah* or *Tozih al-masaael* is a principal book by which a Marja declares his orders to his followers.

32 Marja literally means source to imitate or follow. He is considered a religious reference; known as Grand Ayatollah.
haram (forbidden) and the sentence for a drunk person is 70 lashes. However, in non-resalah semi-deductive texts such as Al-Lum'ah ad-Dimashqiya, jurists provide more explanation about how they arrive at the given rulings. For example, a jurist may say that, according to Qur’anic verses and based on such and such hadiths, he has deducted/extracted the prohibition of wine in Islam. Similarly, the deductive jurisprudence that is written for scholars in the field includes complex explanations in usul-al-fiqh and in-depth theoretical jurisprudence on how the jurist reached the prohibition of wine. An example of deductive jurisprudence would be Jawaher al-Balaqah books.

Any resalah needs to be authorized by a particular Mujtahid or Marja (grand ayatollah), without whose authorization the Tozih al-masael (resalah) will have no credibility for either the discipline of jurisprudence or followers of the Mujtahids.

Since the late Safavid era, many ordinary people have habitually referred to Mujtahids and their resalabs for their daily religious obligations and this has given Mujtahids a central position in the religion and politics of Iran. This established political and economic locus of Mujtahids continued up to the Constitutional Revolution (1905-1909), when a secular faction appeared in Iranian society and politics. The proposed modern western-formed law, introduced by Iranian secular intellectuals such as Mohammad Ali Foroughi and Hassan Taghizadeh, was a significant factor in the political unrest during the Constitutional era. According to Bayat’s “Iran’s First Revolution: Shiism and the Constitutional Revolution”, “The Constitutional Revolution is generally viewed as a nationalist-religious movement led by concerned patriots, lay and clerical, whose political consciousness was aroused by European encroachment in the domestic affairs of Iran” (1991, 3). As people became familiar with the modern law, they understood that they were not compelled to follow and imitate the words and actions of
Mujtahids. They pursued their rights instead of their religious duties as dictated by the Mujtahids. In response to this threat, the Mujtahids started publishing and distributing resalahs on a mass scale in order to reconsolidate their political and economic status. Seyyed Ahmad Kazemi Musavai, one of a very few scholars writing on the resalah, asserts that the Mujtahids tried to persuade people that the secular laws are not only against Shari’ah, but also against the common interests of Iranian society (2004). The Mujtahids did not want to lose their influence among Iranians, as any compromise with modern values could begin their decline.

The influence of the Mujtahids has continued to the present. The Islamic Republic’s regime has accommodated the growth of the clergy class and the economic and political privilege of the Mujtahids. Throughout their history, the Mujtahids have never had as powerful and influential a status as they do now. In 1979, Ayatollah Khomeini seized power and became the leader of the anti-Pahlavi revolutionary movement against the monarchical political system. He developed the theory of Islamic government and the Authority of the Jurist (velayat-e faqih), which was proposed earlier by Qajar Shi’a jurists such as Mulla Naraqi, based on Shi’a doctrine. The government of Ayatollahs (1979) is simultaneous with the harsh elimination of all other opposition factions of the revolution such as the nationalists, socialists, and communists, along with other Islamist versions. The triumphant faction needed to rule on the basis of a constitution. As Hamid Dabashi maintains about those revolutionary days, “Shi’ism had to be institutionalized, made into a ruling government, written into a constitution. The clerical revolutionaries assembled. The Qur’an and the hadith, the sayings of the imams and the judgments of the jurists, the wisdom of the foregone ages and the vision of a Shi’i utopia were all brought together, and a constitution was written for the Shi’i state” (2011, 314). Subsequently, a
cultural revolution was engineered in order to Islamize universities and schools, as one of the most important forces of struggle and resistance against tyranny.

Alongside Velayat-e Faqih, the Council of Guardians [Shura-e Negahban-e Qanun-e Assassi] in the current Iranian political system illustrates the power and influence of the clergy class in political affairs. As Hallaq asserts, the Council of Guardians has “the power of a constitutional court in the Islamic Republic of Iran. It consists of 12 members, six of whom are Shari’ah jurists and Mujtahids while the rest are experts in other areas of the law; it has the power to veto any bill introduced by the Majlis (Parliament) on the grounds that it is repugnant to Shari’a norms” (Hallaq 2009, 172). This council must approve the competency of presidential and parliamentary candidates as well. Due to such a high status, which governs the country above other military and economic forces, Mujtahids have published unprecedented numbers of resalaha. For the first time in the history of Shi’a, the Society of Seminary Teachers of Qom introduced the seven most reliable Mujtahids to facilitate the religious task of imitating the Mujtahids, as well as tightening the circle of power among the most reliable Mujtahids in terms of political view after the 2009 uprising in Iran. The clergy class has suppressed any opposition forces, not only in the present era, but also in the past during the Constitutional era as well as the eras of Qajar, and Pahlavi. The Ayatollah Khomeini’s doctrine of velayat-e faqih (the authority

33 Some Shi’a clerics of Qom city established The Society of Seminary Teachers on 1963 with the aim of expanding and propagating of Islam in and outside of Iran and study the Islamic knowledge. The society was also initiated to develop and systematize religious teachings in the seminaries of Iran. Since Iran’s Islamic revolution of 1997, this society is in charge of the determining and introducing religious leaders (Mujtahids, Grand Ayatollahs, Ayatollahs, and Hujjatoleslams) (http://www.jameehmodarresin.org/index.php/en/component/content/article/280-about-us/3580-about-us, accessed May 6, 2014). The Supreme Leader of the Islamic Republic chooses the head of the Society. They have a systematized or/structured publication and strong body of networks in the regime as well as Iran’s judiciary system.

of a jurist) established a legitimating apparatus that contributes to the consolidation of power among Shi’s jurists.

The revolution and its aftermath led to “regressive gender policies” and restrictions for public and private spheres. Mir-Hosseini puts it well about the consequences of the Islamic revolution for women, which included “compulsory dress codes, gender segregation, and the revival of outdated patriarchal and tribal models of social relations. The ‘Islamisation’ of law and society centered on the criminal justice system” (2010, 26). At the same time, the Islamists started controlling, politicizing, and therefore criminalizing the areas of sexuality and gender relations, “and thus facilitated the enforcement of their authoritarian and patriarchal interpretations of the law” (2010, 26).

The Islamic regime tried to reinstate Shari’ah law and reinforce again the Shi’a values of the Savafid era. The new Islamic political order abrogated reforms that had occurred in the previous decades in favor of women in family law, including the rights of women in marriage and divorce, inheritance, and child custody. They lowered the age of marriage for girls to nine, limited the employment of women, and exercised mandatory hijab for all women, including Shi’ites, Sunnis, Christians, and Jews, etc. The theocratic state has encouraged polygamy and temporary marriage as solutions for war widows and as channels for those constrained by the rigorous rules against dating (Afary 2009, 12-13). Women’s rights to their bodies, sexualities, and their marriage became the sites of political and social struggle that has continued to this day.
Chapter Three: The Epistemology of the Feminine Body in Shi’a Jurisprudence

In this chapter, I first discuss Shi’a juristic rulings concerning bodily punishments in the Islamic tradition. I specifically focus on zina law and its relation to the feminine body. I argue that in the case of zina, Shi’a jurisprudence, which can be considered the intersection of religion and law in Iran, legitimates violence in the regulation of sexuality. I then discuss ta’zir punishments in the context of Iran and make an argument concerning the criminalization of the feminine body around the notions of patriarchy, as well as the lusty body of women as perceived in the Shi’a juristic tradition. Next, I will demonstrate the status of a slave woman in the Shi’a juristic texts with the aim of discussing the bodily regulations and disciplines established around the feminine body of a slave in comparison with a free woman in a slave-master and husband-wife relationship. I specifically emphasize that the juristic texts presume that a woman is a reproductive partner in the marriage contract. Additionally, in a slave-master relationship, the texts presume a slave woman to be a sexual partner. Next, I will examine the status of Muslim women in social and political positions in a Muslim society based on the juristic understanding of the feminine body. I will specifically examine three roles, including the imam (leader) in congregational prayers, witness, and inheritor.

What I try to do in this chapter is to understand under what juristic constructs the feminine body is perceived. I argue that Shi’a jurisprudence provides Muslims with comprehensive regulations for their bodies, from birth to death. Not only are there explicit regulations for the presence of female bodies in the public spheres, but there are also exact disciplines and regulations for their bodies in private spheres such as bedrooms.
Criminalized Body and Lusty Body

By way of illustrating how the feminine body is prosecuted, politicized, and criminalized, Mir-Hosseini (2010), an Iranian legal anthropologist, tells the love story of an Iranian couple based on Amnesty international reports and interviews with the lawyer in the case, Shadi Sadr, a prominent Iranian women’s activist who currently lives in exile. Mokarrameh had been frustrated in her abusive and unhappy marriage and she was not able to tolerate it anymore. She did not have the right to get a divorce, as the permissible items of divorce in Iran are severely restricted for women. The rights to divorce are mostly given to men. Jafar assisted Mokarrameh to leave her unhappy marriage. They had a good life, living together peacefully. After two years, the first husband accused Jafar of kidnapping his wife. The police arrested the couple and their case went to trial, but the judge freed them. Four years after this occurrence, the first husband made another complaint and the police arrested the couple again. Mokarrameh was 43 in March 2007, had a child from her marriage, and was pregnant with her second child at the time of her arrest. She gave birth to her baby in a prison in Takestan, a small city in Iran.

Sometime later, the court found her and Jafar guilty of an illicit relationship (which implies an illicit sexual relationship or zina) and sentenced them to execution by stoning. In July 2007, in front of the shocked eyes of human rights activists, Jafar’s sentence was carried out. Mokarrameh informed the court that she had requested a divorce a number of times, but that her husband rejected her demand. Whenever she ran away, he found her and brought her back home. She told the court that she understood that her relationship with Jafar was legal and religiously permitted (halal), as they were in a temporary marriage and had a certificate from a mullah. She trusted that Jafar had managed to get her a divorce from her first husband. However, the judge was not persuaded by her assertions. As Mokarrameh was under the impression that she was in a
legal marriage, she believed that she should not be executed. As the judge was not convinced, the case finally went to Tehran to the Committee for Pardon. With the help of NGOs and human rights campaigns in Iran, her case was brought to the attention of international human rights authorities. Mokarrameh and her son were released on 18 March 2008 (Mir-Hosseini 2010, 97).

It is important to understand how sexuality and sexual relationships are understood in the context of Iranian society in order to comprehend how such a case can occur. Why are persons treated in such a way? To answer this question, one needs to consult with the juristic texts and jurists’ opinions based on which Iranian penal law we are considering.

According to the Shi’a jurists, Shahid Awal and Shahid Saani, zina refers to a situation in which an adult man voluntary penetrates his penis into the vagina of a woman who is not in his nikaah (marriage contract) or his property (mulk al yamin refers to slaves) (2011 Volume 13, 12). Shahid Awal named five constraints for an act to be considered zina. The first one refers to the complete act of penetration. He employs the example of intercrural sex to illustrate that a non-penetrative sex, in which a male places his penis between a woman’s thighs is not considered zina, even if the act causes an erection and orgasm. The act is indeed forbidden (haram) and receives a punishment, but it is not categorized as zina. In order for the act to be considered zina, the subject/doer of the act must be an adult male person. He points out that if a boy penetrates his penis into a woman’s vagina, the act is punishable but not considered zina. The third constraint refers to mental healthiness. An insane person is not considered in this category and his or her act is not punishable. The fourth condition addresses the exact meaning

35 “A type of intercourse generally regarded as non-penetrative sex, in which a male partner places his penis between a male or female partner’s thighs, and thrusts to create friction and achieve orgasm. Because there is no anal or vaginal penetration; intercrural sex is regarded as a safe sexual practise” (http://medical-dictionary.thefreedictionary.com/Intercrural+intercourse, accessed on 30 June 2014).
of a sexual act. It is important that the male’s penis penetrates into the vagina of a woman and not any other parts of her body. Penetration is meant to be from the gobil and dobor of a woman, which includes vaginal and anal sex. Fifth, zina concerns the object of the sexual relation, who must be a female older than nine years old. It does not make any difference, however, in the case of the object of the sexual relation, whether he or she is sane or insane, free or slave, alive or dead. If an insane male or an immature boy engages in sex with a woman who has consented to do so, she is to be punished, not the insane male or immature boy, as insanity and immaturity are constraints of sex to be considered zina. The punishment, however, should be only lashes and not execution (2011 Volume 13, 11-25). This detailed listing shows the comprehensive regulatory nature of the juristic precepts concerning the body and how zina laws regulate bodies.

As Shalakany (2008) describes, Islamic jurisprudence has historically categorized crimes and punishments under one of three types, including had, qasas/diyya, and ta'zir. He refers to Noel J. Coulson and a prominent German scholar of Islam, Joseph Schacht, who reviewed the differences between the three mentioned conceptual categories as follows:

First, hadd offenses entail fixed penalties which are considered to be "the right of God," meaning the judge has no discretionary power in the hadd’s application, and the punishment must be enforced even if the plaintiff forfeits his private standing in the dispute. Second, qasas/diyya [retribution] offenses also entail fixed penalties with no judicial discretion in their application, but these penalties are considered to be the "right of man" and accordingly discretion is invested in the private plaintiff to choose between optional qasas and diyya penalties. Finally, ta'zir offenses do not have prescribed penalties and hence the definition of crime and punishment is left to the discretion of judicial and administrative authorities” (Shalakany 2008, 14).

The categorizations that Schacht describes are not restricted only to the Sunni tradition in which he is expert. The same categories are proposed by classical Shi’a jurists as well (See Volumes 13 and 14 (2011) of Lom’e Dameshqi). Classical jurists of the four madhabs of Sunni and Shi’a are generally in agreement to criminalize zina and categorize it as a hadd [literally
meaning limits or prevention] (plural: *hudud*) crime. Crimes that command *hadd* punishments embrace various acts, including: adultery and fornication, male homosexuality, lesbianism, sexual procurement, accusations of adultery or homosexuality, use of alcoholic drinks, and robbery. Here, my focus is on adultery and fornication, known as *zina* in the Islamic tradition, as it is the best channel, I would suggest, through which to show how the feminine body is criminalized. It is also the extreme mode and situation among the various kinds of Islamic punishments, as it involves the death penalty by stoning, which has been one of the main concerns of human rights activists inside and outside Iran.

Based on some specific Qur’anic verses (24:2 and 25:68-70) and Tradition, *zina* is liable to either flogging or death by stoning. These verses and Traditions, as well as *hadiths* that are the basis of *zina* laws, have been a place of controversy for many modern jurists, activists, and Islamic feminists (for example Kelica Ali (2006), Ziba Mir-Hosseini (2010)). They argue that the rulings that focus on criminalizing the body and sexuality are male-biased views, reflect the perspective of those who created them, and are not compatible with the Qur’anic verses and Tradition. They also argue that as some forms of *zina* have a consensual nature, the free consent of two persons engaged in a sexual relationship should be considered by Muslim jurists, who are in charge of creating the Islamic laws.

The punishments for *zina*, nevertheless, are hardly ever performed, because it is difficult to prove. The accused person “must confess to the offence four times”, in case of Twelver Shi’a, according to Shahid Awal (2011 Volume 13, 26). This is considered the first way to prove *zina*. The second way of proving *zina* is the unlikely testimony of four pious, Muslim, male eyewitnesses who have personally observed the actual act of penetration in a crystal clear way. This “crystal clear” is much emphasized in the texts, and Muslim jurists have used the analogy
that a man’s penis must be seen to be entered into a woman’s vagina, as if a pen were dipping into an inkpot. All witnesses also have to concur in their accounts. Concerning the preconditions of testimony, four male eyewitnesses are required. If four are not available; then three male and two female; if three male are not available; then two males and four females need to be witnesses of the scene. In the last circumstance, only flogging can be exercised as the punishment and not stoning, as the testimony of women is not considered to be as authentic, accurate, and acceptable as the testimony of men (Shahid Awal 2011 Volume 13, 26-32). Under such circumstances, conviction for zina is effectively impossible, since the offence is so difficult to prove. This peculiar measure is described by the 17th century jurist ‘Ali al-Qari’ al-Harawi as follows:

[I]t is a condition that the witnesses are four [...] because God the Exalted likes [the vices of] his servants to remain concealed, and this is realised by demanding four witnesses, since it is very rare for four people to observe this vice (quoted in El-Rouayheb 2005, 123; [emphasis added])” (Mir-Hosseini 2010, 12).

As shown in the account of the jurist al-Qari’ al-Harawi, zina punishment is supposed to occur extremely rarely. It is, however, much debated, and a shadow of fear concerning the crime exists in Muslim countries such as Iran. Alternate marriage and marriage-like practices have already emerged or re-emerged for decades in various places in Iran, especially bigger cities with youthful growing populations. These practices include the legally and religiously forbidden relationships between opposite sex as girlfriends and boyfriends, as well as novel forms of relationships such as cohabitation. All of these forms, apart from the acceptable forms of licit relationships between two members of opposite sexes, namely permanent and temporary marriages, are prosecuted and criminalized. They may not be trapped into hadd punishment, because of the difficult conditions concerning evidence. However, there are other categories for punishing individuals, namely ta’zir, which I will discuss later on in this section.
To understand how and why the body is criminalized in *zina*, one should know about the punishments of *zina*. In Shi’a jurisprudence, the punishments concerning *zina* are categorized into eight groups, based on various situations that I will discuss briefly.

Beheading with a sword, stylet or bowie knife is for those who commit a sexual act with their *mahram* (close blood relatives; an unmarriageable kin with whom sexual intercourse would be considered incest), namely, mother, father, and sister. This prohibition includes stepmother and stepfather as well (Shahid Awal 2011 Volume 13, 42). This punishment is one of the most severe punishments in Islamic jurisprudence, although it is not exercised in Iran; stoning is the alternative punishment for this crime.

Stoning is exercised for married adult individuals who are sane (referred to as *aaqil*). A sexual relation between a non-Muslim man and a Muslim woman falls into this group as well. In this case the adulterer (non-Muslim man) would be punished with the death penalty. In the case of forcible rape, the rapist would receive the death penalty. One hundred lashes is for those who commit a sexual act with under-aged girls and boys, (typically under-aged is defined as nine for girls and fifteen for boys), or insane men and women. If a sane woman, however, has sex with an insane man, she is to be stoned, not lashed (Shahid Awal 2011 Volume 13, 70). This exception reveals the Islamic juristic logic behind *zina*, and sexual relations in general, which is male-centric. In the case of a sane female having sex with an insane man, the woman is to be stoned, because, according to a male perspective, penetration occurred. In the case of an insane woman having sex with a sane man, the man is not to be stoned. Based on *hadiths* and narratives, Shahid

\[36\] I use the phrase “commit a sexual act” deliberately, because in the juristic chapters on *zina*, the texts use the negative word of “*ertekaab*”, when they refer to sexual relationship.
Awal concluded that, in the latter case, the man is not to be stoned, as penetration has not occurred, because the woman is insane. A woman is seen as a good that is defective in the case of insanity. Thus, the sexual relation with her is of no value. Commodification of the feminine body is the underlying notion of this precept. Having sex with an insane woman, although erection and orgasm occur for the man, is not considered a real penetration in the eyes of the jurists. The opposite situation of an insane man having sex with a sane woman is not seen as parallel.

The next punishment is lashing, shaving the head, and exiling from the homeland, which is a triple punishment ordered for non-married men, or those married men who have not had sex with their wives yet. Shahid Saani (2011) explained this ruling to be for a man who does not possess the genital organs of a woman, which means a married man who has not had intercourse with his wife yet. In case he has already had sex, the ruling would call for the second punishment, which is stoning. This type of punishment is ambiguous for women, as different classical jurists have had different precepts in the matter of women. Some classical jurists believe that women should be sent into exile. Others, however, disagree with this prohibition and order the transgressors to exile. Some prohibit shaving the head for women, some are neutral in this matter and do not have any preference (Shahid Awal, Shahid Saani 2011 Volume 13, 75-78). Another type of punishment addresses sick people. Sickness is generally a ground for reducing penalties and punishments in Islamic jurisprudence. When using the word sickness, the texts mostly refer to permanent disabilities, but it is not entirely clear what the exact meaning is. Sick men and women who have illicit sex are not supposed to have the same punishment as healthy persons. The punishment depends on their ability to bear pain and their physical tolerance. If the designated punishments could have a serious effect on their health, they are to be punished less
severely and over several occasions as opposed to being punished once continuously. For example, using a thin and breakable wooden stick for lashing is recommended as well as several occasions to mete out the punishment rather than all on one occasion. This discounted and assuaged punishment, however, does not apply to those who are to be stoned. The less severe punishment, which is designed for sick persons and called zaqs, can be applied only if the punishment is lashing and not other types of punishments such as stoning (Shahid Awal, Shahid Saani 2011 Volume 13, 81-90). Practicing hadd for a pregnant woman is similar to the punishment for this group and the sentence is postponed until after birth of the child.

Next, there are some occasions that are considered sacred times in Islam, such as the months of Ramadan and Muharram. Typically, punishments are dependent on the importance of these occasions. Extra lashes are considered for those who commit a sexual act during Ramadan, the most sacred month for Muslims during which they have to fast. This extra punishment is applicable only to those who are supposed to be lashed and not, for example, those who are to be stoned (Shahid Awal, Shahid Saani 2011 Volume 13, 83). The punishments demonstrate the regulatory nature of zina laws. The laws are specific and detailed concerning the way the act must happen: when, with whom, and where.

Jurists Shahid Awal and Saani pointed out some supplementary issues concerning hadd punishment, of which four deserve particular attention. First, if an ordinary Muslim man witnesses his wife committing a sexual act with another man, the husband may kill both of them. Only men have such a privilege, and the text is silent in the case of women who witness their husbands committing such acts (Shahid Awal 2011 Volume 13, 87).
Another supplementary note concerns foreplay, kissing, and sleeping in a bed with a *haram* opposite sex. The punishment of *tazir* and not *hadd* is applied to this type of illicit act as penetration does not happen in this type of sexual act. Penetration during intercourse is important for an act to be considered *zina* and receive the sentence of the death penalty (Shahid Awal 2011 Volume 13, 96).

Since illegal sexual relations are subject to very strict stipulations, accusing somebody of having sex outside of the two licit forms of relationships, namely marriage and slavery, is conceived as one of the greatest sins, based on Islamic juristic texts. If an individual accuses somebody of *zina* and he or she fails to provide sufficient evidence for his or her claim, Shi’a jurisprudence will punish him or her for *qazf* (slander) (Shahid Awal 2011 Volume 13, 124). This punishment consists of eighty lashes, because of the Qur’anic verse, which dictates: “And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient, except for those who repent thereafter and reform, for indeed, Allah is Forgiving and Merciful” (24, 4). This is why Muslims are ordered to be highly vigilant regarding their testimony and witness.

Another complementary note of Shahid Awal is about having sex with a dead body. Punishments in this regard are the same as the ones already listed, with the same terms, restrictions, and stipulations, unless a man has sex with the body of his dead wife, which is, surprisingly, not categorized as *hadd*. But a lesser offense of *ta’zir* is exercised in this condition (Shahid Awal 2011 Volume 13, 268). As the body of a woman is considered to be the property of her husband, he is able (and the juristic texts allow him) to take advantage of the body, even
after she dies. The texts are silent in the case of a woman who is willing to engage in a sexual act with the dead body of her husband.

As one can see, the laws are extremely detailed to regulate the body as well as the sexuality of not only married couples, but also unmarried ones in Muslim society. The punishments are generally gender-neutral, apart from a few items that I addressed above. There are also settings and rules that protect an individual from false accusation and harsh punishment such as stoning.

In agreement with other scholars, however, I argue that *zina* laws are more concerned with the feminine body, due to the overarching patriarchal structure of the society in which these laws are formulated and enforced. As Ziba Mir-Hosseini (2010), an Iranian legal anthropologist, claims, “*zina* laws are… embedded in wider institutional structures of inequality that take their legitimacy from patriarchal interpretations of Islam’s sacred texts” (Mir-Hosseini 2010, 22).

Shahnaz Khan also supports this argument in the context of Pakistani society in regard to Pakistani criminal law. She asserts that,

The ordinance makes no distinction among the levels of proof required to sentence someone for rape or adultery. Under the terms of the law, victims of rape have been convicted of adultery (because they acknowledge intercourse) and the accused released for lack of evidence. If convicted under the ordinance, the rape victim is sentenced to one hundred lashes if unmarried and death by stoning if married (Shaheed and Mumtaz 1987). Although there have been a few convictions over the years, no sentence entailing stoning to death has been carried out so far. Despite the low conviction rate (5 percent), research shows that thousands of women have been charged and jailed under the Zina Ordinance… Although many of the prisoners are released upon trial, they face years of incarceration before trial. Critics of the ordinance argue that the Zina Ordinance allows families to draw on the power of the state to help regulate the sexuality of “their” women and reclaim family honor, contributing to the growing incidence of state-sanctioned violence against women (2005, 2019-2020).
Based on her fieldwork and interviews with women who were accused of *zina* in Pakistan, Khan shows in her two articles (2004 and 2005) how the *zina* legal process politicizes sexual acts and women’s bodies in Pakistan, even though according to the juristic texts, both genders are generally supposed to be treated equally in *hadd* punishments. This process of politicizing is long and frustrating. The police arrest women based on an accusation, usually from their family or husbands, which is not clear to be true. The women must stay in jail during the long process of detection. Since they have lost their social and family honor because of being imprisoned, regardless of being a wrongdoer or not, they have tensions with their family and the society upon their release. Khan’s interviews explain why the women are in jail. Most of the cases revolve around the notion of the chastity of women. She examines the complaints of the fathers or the husbands of these women concerning the women being unfaithful or impious to their family as well as their society. Her research elaborately shows that they are mostly women who have to deal with and being targeted in *zina* laws.

Michael F. Polk also discusses *zina* law in the context of Pakistan, but from the perspective of refugee studies. He argues that “Under this ordinance [*zina*], women who report having been raped must prove that the intercourse was without consent. If unable to prove this lack of consent, they can be charged with fornication” (1997, 379). He discusses the consequence of this law for Pakistani women in the context of refugee studies, as the law is a reason that the victim women, in the case of reporting the rapes, “seek asylum for ensuing gender-based persecution” (1997, 379). According to the Shi’a juristic texts, which are the focus of this thesis, victims of rape shall not receive the death penalty and it is the rapist, in this case men, who shall receive this punishment. Polk’s account shows, however, that it is mostly the women’s bodies that are directed in *zina* laws. These laws make the so-called “guilty women”
vulnerable and further reduce their status in the society, making them even more inferior than women who are not labeled as guilty.

Kelicia Ali shares a similar concern by noting a recent case of *zina* in Egypt. The husband, a famous Egyptian actor, had married a woman “in a widespread but largely clandestine phenomenon known as *zawaj ‘urfi*, or customary marriage. *Zawaj ‘urfi* is usually kept secret from parents, and remains completely outside the bureaucratic channels of the Egyptian nation-state” (2006, 67). The husband rejected the marriage and delegitimized his newborn child. Consequently, the child was labeled as an offspring of *zina*, and the wife was accused of committing *zina*. “No one may recognize an illegitimate child and he does not even have recourse to adoption” (Bouhdiba 1985, 17). The wife asked for a DNA test, which was not accepted by the court. Even if it became clear that the husband was the father, because the marriage was not registered legally, the mother would be in trouble and accused of committing *zina* (2006, 67).

As the biological maternity of a child is obvious because of the pregnancy of the mother and the position of paternity can be ambiguous, when it comes to prosecution and punishment, it is usually the feminine bodies that are prosecuted and targeted for punishments and that receive a greater share of punishment in general. Although *zina* is rarely proven, it is nevertheless aimed at the feminine body to monitor, discipline, and punish it. In the context of a patriarchal society like Iran, these texts and rulings reinforce the common perception that when a woman commits *zina*, she steals from the property of either her husband (in case of a married woman) or her father (in case of an unmarried woman), as her sexuality is supposed to be under the control and possession of either her father or her husband. This possession and control contribute to the social order of the society. As Syed Ibrahim puts it, “Islam considers *zina* a major sin, an
indecent act, and an evil path. Therefore, protecting society from Zina is an evident aim of Islam. Since Zina is considered a great sin and a detestable social illness, Islam required doubtless proof for convicting an individual of Zina and severe punishment for those convicted\(^{37}\). The concern of the social order is widely discussed in the Islamic tradition. The continuous fear and omnipresent obsession of Islamic jurisprudence as well as Iran’s authorities towards the feminine body come from this concern. Unlike zina laws, which are rarely exercised, there are several other punishments articulated in Shi’a jurisprudence to purify society from unchastity. Let us consider briefly the ta’zir punishment for the uncovered head in Iran, which illustrates the everyday tensions between Iran’s regime and Iranian women.

*Ta’zir*, a lesser offense compared to *hadd*, is based on the discretionary power of a judge in an Islamic regime. Punishments for several crimes are not stated or fixed in textual sources, as they are jurist-based. *Ta’zir* is a type of punishment that occurs frequently in the everyday life of Iranian women. While there are various crimes that receive *ta’zir* punishments, which I already discussed above with regard to *hadd*, I will address *ta’zir* punishments for transgressing mandatory dress codes such as hijab in Iran.

Book 5 of Iranian Islamic Penal Codes relates to *ta’zir* and preventative punishments. Article 16 defines *ta’zir* as a “punishment or chastisement whose form or quantity has not been determined by *sharia*’ and left to the decision of the judge, such as prison, cash fines, lash.” The amount of lashing should be less than in *hodoud*. Preventative punishments are defined in Article 17 as those “determined by government to maintain order and to observe society’s expediency in relation to breaches of governmental rules and regulations, such as prison, cash fines, closure of place of employment, removal of permits, deprivation of social rights or living in a particular place or places or a ban on living in a particular place or places and such like”. Article 638 relates to crimes against “modesty and public morality”. An addendum says “women who appear without the

\(^{37}\) [http://www.irfi.org/articles/articles_51_100/zina_and_rajm.htm](http://www.irfi.org/articles/articles_51_100/zina_and_rajm.htm) accessed on 15 Jun 2014).
This set of rulings addresses and constrains the freedom of women in terms of their hijab and covering the body, based on the Islamic dress code prevalent in Iran, and indicates the importance of the social order. Women’s unchastity is feared, as it can cause damage to a society. Women’s mandatory dress code, specifically the hijab as it is experienced in Iran, does not have any counterparts in other Muslim countries. It is also not found in the discussions of Muslim jurists. The general juristic rulings that discuss hijab are found in the section of Praying and Cloths of Prayers in the resalahs more than any other chapters (see resalahs of Ayatollah Gulpaygani, Noori Hamedani, Lankarani, Makarem Shirazi, and Sistaani in Nine Marjas 2011). There are a few Qur’anic verses that are controversial, as the Islamic feminists and contemporary interpreters argue that the verses are addressed to the wives of the Prophet and not the whole society of Muslim women (33:53, 33:59, 33:32-33). Other verses suggest that women guard their private parts and cover the upper part of their bodies (bosoms) (24, 30-32), but they do not address other forms of the hijab, including mandatory headscarves in Iran (for example, Ahmed (1992), Barlas (2002), Mir-Hosseini (2010), Sadeqi (2013). Under ta’zirat punishments, in Article 102 of Iran’s penal law, ‘appearing without hijab for women’ is listed and the punishment is 74 lashes.

The issue of veiling and body coverage is of great concern for the regime of Iran. The social security forces, (Gasht-e ershad or Guidance Patrol), which are supposed to be in charge of the protection of the chastity of women and combat social corruption, become severe with those women who transgress the coverage (hijab) boundaries. The Iranian state considers

38 [http://wwwiran-bulletinorg/political_islam/punishmnthtml accessed on 23 Jun 2014]
whatever is beyond the boundaries as improper and against the required Islamic dress codes, and
punishes people who transgress such codes with taʾzir. Iran’s national police have increased their
forces to prosecute women in the streets, fining and punishing them to maintain control of the
society. Based on recently released statistics, in 2013 alone, nearly three million women were
prosecuted by the Guidance Patrol and received oral warnings because of what is called
‘improper hijab’. Moreover, 2,753 people have received written warnings, and, finally, 18,080
cases were sent to the courts.¹

These tensions and fights over the feminine body, in the case of hadd as well as taʾzir
are, I believe, based on a juristic construct that perceives the presence of women in public as a
source of chaos and a threat to the social order. The set of penal laws understands the feminine
body as a lusty body, and all these regulations and rulings are to control the sexuality of women
to protect the society from their lust, which causes chaos (fitna).

Ayatollah Motahari, still one of the most inspiring Iranian thinkers in Shi’a thought,
justifies veiling because of its contribution to an orderly society. His book, entitled Masʿaleye
Hijab [The Issue of Hijab] (2012), is in its 96th edition and is widely distributed in Iran through
a governmental publication. “Hijab helps people breathe in a morally clean society”, Motahari
asserts (2012, 76). Engaging in a sexual relation outside of marriage brings about an unsecured
society and spiritually speaking, a sinful milieu for believers’ souls (Motahari 2012, 76). He
justifies this argument on the basis of his western-phobic views, which is the other side of the
“westernstruckness” (qarbzadegî⁴⁰) coin, according to which he presents some dubious

⁴⁰ “The term “Westernstruckness” or “Westoxification” is derived from the Persian term “Gharbzadegi”
and refers to the complete imbibing of western culture while eroding traditional Iranian cultural practices.
information concerning the high rate of rapes and sexual abuses happening in western countries. He articulates his rhetorical argument, based on the vulgar and unrefined dualism of pure and healthy Muslim societies with stable and durable marriages versus evil, sinful western societies with non-coherent family relations. By such an argument, he tries to convince people that veiling is an Islamic solution to the social problems that are particular to the modern times in which we live. Motahari argues that women in Islam are ordered to veil; if they do not, their unveiled bodies provoke the sexual desires of men, which results in society being socioeconomically dysfunctional (2012, 84). He provides several imaginary situations in which women are unveiled and men, who are surrounded by the unveiled women, become aroused. The entire community, therefore, will be insecure he concludes (2012, 85). The entire book deals with the issue of the female body and how this body may destroy the social order of the society if it is not covered properly.

According to the majority of Shi’a Mujtahids, women are not allowed to be alone in a room with men unless they are *mahram* (close blood relatives; an unmarriageable kin with whom sexual intercourse would be considered incest). It is considered the greatest sin for Muslims if they violate this stipulation, on which most of the Shi’a Mujtahids are agreed (2012, 169). As Ayatollah Makarem Shirazi, Mazaheri, Sistani, Fazel Lankarani, and Tabrizi declare in their *resalahs*, if a man and a woman are in a private place in which no one is present and no one can enter the place, if they are afraid they might engage in an unlawful and forbidden act, they must

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The term first came to be used towards the end of the 20th century to refer to the way western ideology was viewed by Islam. The only redeeming factor [in the view of Iranian Islamists] was that the Iranian religion of Shia Islam was left untouched by westoxification. Some nations view “westoxification” as a threat to their culture and adopt a war-like stance toward western influences” (http://www.innovateus.net/innopedia/what-does-term-westoxification-mean, accessed 5 July 2014).
exit. Ayatolah Makarem Shirazi and Safi Golpaygani assert that even if they pray in that room, it is forbidden (*Resalahs Nine Marjas* 2011, 1352). As Motahari argues, this is because this situation bolsters the possibility of being sinful (2012, 169). This form of understanding of the body is concretely seen among Iranian authorities and the society, where half of the population is deprived of the right to go to stadiums. Since the Islamic revolution, Iranian women have been banned from watching soccer games in stadiums, because the mandated Islamic gender segregation says that it is inappropriate for women to be among men in stadiums. Advocates of this segregation attribute its necessity to the aggressions and violations of men, which occur in stadiums, so that it is for the women’s own good to be banned from entering them. This prohibition has been for soccer games and not any other games, although, recently, similar prohibition was exercised for volleyball games. On the day of the volleyball game between Iran and Brazil, surprisingly Brazilian women and other non-Iranian women with their passports in hand were allowed to enter the stadium, while Iranian women lined up behind the doors. “In the current conditions, the mixing of men and women in stadiums is not in the public interest. The stance taken by religious scholars and the Supreme Leader remains unchanged, and as the enforcer of law, we cannot allow women to enter stadiums, said Iran’s police chief, Esmail Ahmadi Moghadam”41. For the next game, some women activists along with other women who wanted to cheer their team went to the stadium and protested against the new regulation, which banned women from going to the stadiums. Some people were arrested and no Iranian women were permitted to enter.

Following such occurrences, Fatemeh Aliya, a parliament representative, asserted that the responsibilities of women are husbandry, giving birth to children, and nurturing them. Women’s tasks do not include watching volleyball games, she asserted. Some want to impose roles on women that are not basically their roles and that contradict the religious roles of the women. The woman whose main concern is to go to the stadiums and watch the games cannot concentrate on her main determined responsibilities. Aliya characterized the desire to attend volleyball games as the invasion of western ideas and asserted that Iranians must be careful. She concluded that there is no reason for women to attend a place in which hundreds of men are gathered, as this act is a ground for rape and offense.  

In such episodes, female bodies are entirely considered as sexual bodies, and as a result women and men are not allowed to be alone in a room. Whenever a man is exposed to a woman, chaos may occur, as it is likely for Satan to appear to them. One can see here the omnipresent fear concerning female bodies, as the female body and sexuality are seen “as the site of generating chaos” in society (Tourage 2005, 610). Such restrictions are not directed only to women, as Anwar Hekmat (1997) argues. It indicates that in the eyes of the juristic books, “all male believers are potential “Satans” who might try to take unconcealed women for themselves” (1997, 192). “The obvious implication is that seeing a woman without a veil would cause the typical Muslim male to lose all control and that unveiled women would constantly be subjected to unwanted sexual advances” (Hekmat 1997, 193). These restrictions and sexual segregations not only fetishize the feminine body and depict it as a lusty body, but also empower and reinforce the common suppressive image of passive women and aggressive men who cannot

control their sexual desires in front women. It is, thus, for women’s own good to be veiled if they want to be secured against men in the society. As Sadeqi cited from Tabarsi, a prominent classical Shi’a jurist, zina is more obscene and shameful for women than it is for men. This is harmful because women can become pregnant. It is also harmful because lust is stronger in women (2013, 286). This statement indicates not only that the female body is more targeted and criminalized in zina laws and Islamic punishments, but also that it is considered a lusty body which needs to be controlled and disciplined.

Fatima Mernissi (1987), a Moroccan feminist and sociologist, also addresses the importance of the social order in Islamic thought, saying that a Muslim is not ordered to eradicate his or her instincts or “control them for the sake of control itself, but he must use them according to the demands of religious law” (1987, 27). She makes a connection between the human instincts and social order and how religious rulings contribute to maintain this order. She compares the concept of an individual in Christianity and in Islam. “The concept of the individual as tragically torn between two poles-good and evil, flesh and spirit, instinct and reason- is very different from the Muslim concept” (1987, 27). Sadeqi agrees with this dualism, saying that, unlike Christianity, in utopic Islamic and Zoroastrian teachings, desire and pleasure are never rejected or ignored. They occupy important parts of the worldly and hereafter lives (2013, 166).

Similarly, the main argument of Bouhdiba (1985), like most of the Islamic apologetics in Sexuality in Islam, is that Divine law perceives sexuality as a sign of divine power and does not deny men’s sexual energy. On the contrary, it considers sexuality to be a sacral characteristic of human beings (men). Islam sees instincts as positive energies. But the main concern is always how to control such energies to move smoothly in a right track in the society. Concerning zina,
he maintains, “anything that violates the order of the world is a grave disorder, a source of evil and anarchy” (1985, 30). That is why zina stimulates such strong, undisputed blame (1985, 30).

Mernissi discusses her disagreement with the prevalent contemporary understanding of gender relations, which is assumed to be aggressive men interacting with passive women. She argues that in Islam women are seen as powerful, sexually active, and simultaneously dangerous. They are subordinate to men in Islamic law and institutions to limit their power. She privileges a superior and unique position to the social order and the Ummah (Arabic word for nation and community). According to Mernissi, Islamic precepts are subordinate to the social order and Ummah has a fundamental position in Islam. She concludes that since a female is very active and energetic, she can be a danger to the society. The concept of marriage and family, thus, become very important to prevent this danger by controlling the sexuality of women inside of the family. She maintains that Islam is afraid that if the desire of women is not satisfied in the society, it may cause harm (Mernissi 1987, 30-45). Mernissi argues that the security of the social order is directly linked to the virtue of women. “Social order is secured when the woman limits herself to her husband and does not create fitna, or chaos, by enticing other men to illicit intercourse” (1987, 39).

Some address a contradiction in Islamic juristic perspectives concerning women and their sexualities. Fetna Sabbah proposes two juristic discourses moving along together in Muslim societies: orthodox juristic discourse and erotic juristic discourse. According to Sabbah, in the orthodox discourse, desires are limited and women and men are not the same in terms of their desires. In this discourse, women are the passive beings, whereas men are the active ones. In erotic discourse, on the other hand, the desires of women are extreme and unlimited. Their
desires are destructive and the source of chaos and disorder which harm the society (Sabbah 1984).

Based on the sources I have studied in Shi’a jurisprudence in this thesis, it seems that apart from the similar final consequences of both discourses, which are various forms of control and subjugation of the female body, the two discourses clearly exist in the Shi’a juristic texts and their understanding of the female body. The orthodox discourse, I think, is more dominant in Shi’a juristic texts, specifically in resalaha chapters on Marriage. This conservative discourse is seen, specifically, in the concept of ‘awra that I point out later in the next section. The erotic discourse, however, is more prevalent in the discussions that have social dimensions and that are related to the presence of women in the public sphere and to the role of women in society. These discussions include punishments such as zina laws, hadd, ta’zir, as well as hijab and veiling. To show this mixture of both erotic and orthodox discourse in Iranian Shi’a, I point out an Iranian TV program, which was recently released for the education of married couples concerning marriage and sexual relations. The clergyman, Dehnavi, quoted a hadith from the Prophet Mohammad. “The Prophet asked his audience: Do you want me to tell you who the best woman is? The Prophet continued, answering that the best woman is the woman who is the most chaste and virtuous woman and simultaneously the most unchaste and un-virtuous woman. The audience became surprised, as it is a paradox. The Prophet replied, she must be an unchaste woman with her husband in their bedroom and a virtuous woman with other unrelated men (naa mahram) in the society. A wife should rip off her chastity in front of her husband”43. This type of teaching, which is publicly propagandized in Iranian society, demonstrates the presence of both

the erotic and orthodox discourses in Iranian Shi’a teachings. The former is to be presented in the private sphere, the latter in the public sphere.

The erotic discourse seems to be more prevalent in Sunni jurisprudence, as Mernissi and Sabbah argue, although they address some discussions that indicate the presence of orthodox discourse in Sunni jurisprudence as well. Each of these theories, thus, is based on different social and historical grounds. Although it seems that the two discourses exist in Shi’a jurisprudence, by accepting polygamy (in this case permissibility of men having four women) and temporary marriage, Twelver Shi’a juristic teachings perceive women as more passive and subjugated rather than as persons with unlimited desire and lusty bodies when it comes to the discussion of marriage and the rulings concerning sexual behaviours in bedrooms. According to Shi’a jurists Shahid Saani and Awal, and other Mujtahids such as Ayatollah Makarem Shirazi, Taqi Bahjat, and Hossein Mazaheri, men are allowed to marry four women simultaneously (Shahid Awal, Shahid Saani 2011 Volume 9, 152). They are also permitted to marry an unlimited number of women in the institute of temporary marriage, while women can only be sexually lawful to one man at a time (Resalah Nine Marjas 2011, Shahid Awal, Saani 2011 Volume 9, Haeri 1993, Mir-Hosseini 1993). Temporary marriage (Farsi: sigeh or sigheh, Arabic: mut’a) is a licit form of marriage, which does not have any equivalent in Sunni jurisprudence. “Sigheh is a renewable contract of marriage for a defined duration, from a few hours to ninety-nine years” (Afary 2009, 6). Temporary marriage is one of the crucial disagreements between Sunni and Shiite teachings. As Sadeqi claims, sigeh is against family stability in which the rights of each couple are not
determined clearly (2013, 321). Such regulations demonstrate the conservative attitude of Shi’a jurisprudence towards sexuality and the body in the private sphere. Men are granted freer domain for their sexualities, but women must limit their sexualities and bodies to one man, as they are seen as sexually passive objects.

Contrary to most of the scholarship on Islam and sexuality that is focused on Sunni jurisprudence and suggests the presence of erotic discourse in the marriage rulings, in Shi’a jurisprudence one can see that most of the rulings in the private sphere are regulations that consider women as passive objects that belong to the orthodox discourse, as previously discussed. In social aspects and discussions concerning various punishments, such as ta’zir for not wearing hijab, or zina, however, the Shi’a juristic tradition defends society against the disruptive power of women’s sexualities and their lusty bodies to constrain them from causing disorders. The continuous fear of Iran’s Islamic regime concerning the Islamic dress code is rooted in an erotic and lusty understanding of the female body in society that may make offense and trouble. In a recent meeting in the parliament of Iran, some representatives played a clip of Iranian women, entitled “Women in Leggings”, in which pictures were shown of several women in various forms of forbidden clothing, such as colourful leggings instead of loose pants. Several representatives noted and warned the Minister of the Interior concerning the social crimes and problems in Iranian society and accused women wearing non-Islamic hijab of being the sources of social problems in the society.

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44 For more discussions on temporary marriage and its position in Iranian society, the reader may consult with Shahla Haeri’s Law of Desires: Temporary Marriage in Shi’a Iran (1993).

In a recent interview, Mahmood Golzari, an assistant in youth affairs in the Ministry of Sport and Youth, said that nowadays one of the social problems of Iranian society is the increasing number of divorced women. Divorced women are harmful to Iranian society, Golzari asserted\(^\text{46}\). The sexuality of women, especially divorced women, as they are not sexually virgins anymore, is frightening for Islamic authorities. That is why they seek various forms of laws and regulations to control this sexuality.

As several examples in Iran society show, including gender segregation in public transportation, schools, mosques, and recently universities, as well as the incidents in my earlier discussion concerning the presence of the women in the stadiums and the wearing of hijab, the feminine body is understood as a lusty body that causes chaos and disorder in society; thus, it should be carefully monitored and veiled, and prosecuted and punished in the case of transgression.

**Reproductive Body versus Slaves Sexual Morality**

The current political power in Iran, as well as the Shi’a jurisprudence that provides its theoretical and theological foundations, is based on discrimination. This discrimination, in general, is in favour of clerics and other social groups serving the theocratic government. It is between Muslims and non-Muslims, Shi’a and Sunni, the religious and atheists, men and women, as well as slaves and free. I believe that to understand the position of women in Iran, one must understand their place through and in such a discriminatory system.

As Kecia Ali puts it well,

Gender was, then, the most enduring aspect of legal personality. Both slavery and minority were legal disabilities of a sort, as was—in a different respect—being non-Muslim. However, only femaleness permanently limited a person’s legal capacity. A slave might be manumitted, a non-Muslim could convert, a child would reach maturity. A woman, however, would remain female, with the “whiff of disability” attached to her legal capacity (2010, 47).

The subject matter of “slavery” has been removed from recent juristic debates as well as Shi’a jurists’ resalas, as it is believed that the era of slavery is over and the issue is no longer current. Like Jews and Christians who do not consider slavery in their teachings and sermons, although the subject is discussed in the Bible, Muslim jurists no longer teach this topic in religious schools nor do they write about it in their resalas, although it is debated in the Qur’an, in the Prophet Mohammad’s Sunnah, and in former juristic books such as *Lom’e* and *Sharh-e Lom’e*. I believe that even the discussions that are not central today can set the terms of the discourse and the worldviews of Shi’a jurists. This lack of attention and interest has probably occurred because of the condemnation of slavery in other institutions outside of the religion as opposed to an epistemological shift within the religious institution. As Ali argues, “Although abolition did eventually occur, there was not a strong internally developed critique of slaveholding based in religious principles” (2006, 43). The same kind of development, can, in my view, account for the disappearance of the topic of slavery in Iranian clerical teachings and resalas.

In this section, I discuss the body politics established around the subject of the slave body with a focus on female slaves, which can be understood through the discriminatory system of Shi’a jurisprudence, namely the patriarchal and hierarchical relationships that give privilege to select groups. After addressing discussions concerning similarities between the institutions of
marriage and slavery, my argument will focus on the differences between these two institutions concerning body politics in the Shi’a juristic teachings. I will discuss the different regulations concerning the body of a female slave and the body of a free woman.

In the course of Muslim history, legal, ethical, religious, and social relationships were established around the institution of slavery, but not much has been written on this topic by western scholars working on Islam. In most Muslim societies, slavery was a social fact. Slaves were mostly employed in domestic services as well as businesses from the emergence of Islam until the declaration of abolition in the late nineteenth and early twentieth centuries (2006, 8). “Slavery, in norm and practice, dramatically influenced the development of laws regulating marriage, divorce, and sex that many Muslims consider binding today… The existence of slavery during Islam’s early centuries resulted in a complex set of linkages between marriage and slavery in Islamic law” (Ali 2006, 43).

There are definitions and principles concerning the matter of slavery in Islam that show that slavery is not appealing in the eyes of the Qur’an and Sunnah. The Qur’an states, “O mankind, indeed we have created you from a male (Adam) and a female (Eve) and made you into various families and tribes that you may know one another. Indeed, the most honored of you in God’s sight is the most pious of you” (Quran 49, 13). Similarly, The Prophet Mohammad stated, “All of you are from Adam and Adam was created from dust⁴⁷”. This statement shows the sense of equality in the Prophet’s view towards slaves. Moreover, a slave is not to be addressed with hurtful words. The Prophet specified not to address them as, “My slave boy or my slave girl.” He said, “All of you are the slaves of God.” Address them with, “O my young man, O my

young lady”⁴⁸. This comment indicates the sense of appropriate treatment towards slaves, in the Prophet’s perspective. The Qur’an, nevertheless, accepts the permissibility of some people to be controlled or owned by others, as it is also seen in the Hebrew Bible and the Christian New Testament. Although the Qur’an does not overtly denounce the practice of slavery or challenge it in order to eradicate it, it minimizes the accessible channels, since slavery is considered accidental and temporary in Islamic doctrine. Two sources of slavery are recognized in Muslim tradition, including people who are taken captive in a war and the children who are born to slave parents. There are some other Qur’anic options and suggestions for dealing with war captives. They include, but are not limited to, unconditional freedom (47, 4) and ransom (47, 4). There is also advice for freeing slaves, particularly “believing” slaves (4, 92).

The Qur’an (24, 33) also bans owners from prostituting female slaves who are not willing to do so. The verse reflects the negative Qur’anic view concerning the subject of slave prostitution and its prohibition, although it permits sexual relations with slaves in the form of a contract between the slave and master.

In spite of the Qur’an’s negative view of the sexual exploitation of slaves, female slaves and concubines did not own the right to their bodies in Islamic juristic books nor traditionally and historically in Muslim societies. Contrary to the Qur’anic view, in the juristic books the relationship between a master and his female slave is entirely a matter of sexual exploitation, as I will demonstrate later. As Ali asserts, the Qur’an itself recognizes that the slave body is the right of the owner, as it is considered “what their/your right hands possess”. In various suras, the Qur’an addresses slaves as “what their/your right hands possess” alongside “wives” or “spouses”

as two categories with whom a sexual relationship is lawful and legitimate (Ali 2006). Thus we read, for example, “Certainly will the believers have succeeded: …[who] guard their private parts, except from their wives or those their right hands possess, for indeed, they will not be blamed” (Qur’an 23, 1-5-6).

The foregoing shows that marriage was not the only licit form of sexual relationship among Muslims. Men who could afford it were allowed to enjoy sexual relationships with their slave concubines. There were a number of regulations concerning the relationship between a slave and her or his master that may be summarized under the concept of ownership or, as the Qur’an expresses it “that which your right hands possess” 49. The Qur’an acknowledges two types of licit sexual relations, which are named Milk al- nikah and Milk al- yamin. The first one refers to marriage and the relationship between husbands and wives, and the second one addresses the relationship of masters with their slaves and concubines. The definition of the word Milk is problematic, as it signifies control, authority, or prerogative. It also refers to ownership specifically when it comes to the discussion of slavery. “The wide semantic range of terms derived from the root m-l-k creates an inherently ambiguous relationship between “control” in a marital relationship and “ownership” in a master-slave relationship, especially where sex is at stake. A man yamliku (exercises milk over) both his wife and his slave, and ‘it is the sense of possession or ownership (milk), implied both in the relationship between a man and his female slave and a man and his wife, that makes cohabitation between the two lawful’.” (Ali 2010, 164). As Ali argues, the word milk is used in the relationship between a husband and a wife with the

49 The word Abd (Slave) is rarely used in the Qur’an. Instead, the phrase “that which your right hands possess” is frequently used to address this issue.
connotation of control. It is also used for a slave-master relationship with the connotation of ownership.

Critically engaged with the discussion of slavery and sexual discourse of Islam, Kelicia Ali’s “Sexual Ethics” (2006) and “Marriage and Slavery in Early Islam” (2010) mostly argue the similarities of the notions behind marriage and slavery in Islamic juristic thought. “The basic understanding of marriage as a relationship of ownership or control is predicated on an analogy to slavery at a fundamental level, and the discussion of wives and concubines together strengthens the conceptual relationship. These connections tend to pass unremarked, however, and the lack of active grappling with the implications of abolition can lead to irony or even absurdity” (Ali 2006, xxv).

According to the resalahs of ulamas, the foremost sexual right of a man in a marriage is the sexual obedience (tamkin) of the wife toward her husband. Unless a woman is in her menstruation period (heyz) or nifaas period (the blood which is discharged from a woman’s womb after her childbirth), she is obliged to obey his husband’s sexual demands anytime and anywhere, without any preconditions. In another TV program on Islamic sexual education, the clergyman, Dehnavi, points to a hadith in which women are advised that “even if your husbands request you to engage in a sexual act while you are on a camel, you have to accept your husbands’ need”. He continues, saying ironically: “we do not have a camel on the streets these days, but do we not have Xantia or Maxima? Thus, this hadith is addressing you, women”. This type of hadith and teaching concerning the sexual obedience of women towards their husbands is

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50 For a further account of the rights and responsibilities of men and women in the opinions of the Ayatollahs, see Sexual Rights of Men and Women in Islam (Amiri 2011).
common, not only in Shi’a texts, but also among Iranian authorities, including clergymen. This account also demonstrates what I earlier discussed concerning the orthodox discourse of Shi’a jurisprudence regarding marriage, as women are perceived to be passive actors who are always supposed to welcome male sexual needs, since males are aggressive and have more sexual desires. This account, I would suggest, is the opposite of what is seen in Sunni erotic discourse concerning marriage, as seen in the work of Mernissi and Sabbah, who study Sunni juristic texts.

Hierarchy, along with the notion of dominance and possession, is another clear notion behind both marriage and slavery (concubinage). Both Milk al-nikah and Milk al-yamin are types of property in Islamic texts, and maleness plays the central role for exercising power in both marriage and slavery from the perspective of Shi’a classical jurists. As Ali argues, “A woman—according to the medieval lawyers—can never acquire this ‘property’. Thus her capacity to acquire rights and duties, i.e., her status as a legal person, is inferior to that of the free male person” (2010, 172).

In this notion of hierarchy, gender distinctions are formed based on the qualities of passive beings versus active beings. The firm border between these two qualities suggests that a

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52 “Concubines are those slaves with whom their masters maintained special sexual relationships. Concubines often received additional privileges – better quality food and clothing, and usually exemption from duties of household service – and were subject to additional restrictions, usually related to keeping them exclusively available to their masters. The status of concubine was informal, however; law and custom allowed a master to have sex with any of his (unmarried) female slaves. It was also insecure: a concubine could be freed and married by her owner, or she could be sold off, so long as he had not impregnated her” (Ali 2006, 40).

53 Kecia Ali refers to Imam Shafii, an prominent Sunni jurist: “Shafii introduces his discussion of male concubinage using a questioner who “holds the view that a woman has milk al-yamin, and says: ‘Why does she not take her male slave as a concubine as a man takes his female slave as a concubine?’ Shafii answers categorically: ‘The man is the one who marries, the one who takes a concubine, and the woman is the one who is married, who is taken as a concubine. It is not permissible to make analogies between things that are different.’ As proof, he refers to fundamental difference between men and women, explicitly linking gendered rights to concubinage with male and female roles in marriage” (2010, 178).
woman is to be married and taken as a concubine, contrary to a man who marries and takes a concubine (2010, 179). This issue is omnipresent in Islamic juristic teachings. Other examples refer to the prohibition of a free woman to take a male slave. Ali describes this hierarchy very well, saying, “The exercise of “ownership” over another person, as property or as a spouse, was dependent on variables of both freedom and gender” (2010, 183). She says a free adult male was the typical example of an owner, and other forms of ownership were measured based on this standard. A concubine was placed at the opposite extreme. In between these two extremes, the jurists discussed varying perspectives concerning the rights of male slaves and free females. A woman thus was not able to have control over a sexual relationship, as she was not an owner in marriage or concubinage, as a woman (2010, 183).

Unlike such discussions of the similarities between the institutions of marriage and slavery, which I have pointed out briefly, my argument here focuses on the differences between the two in regards to my concern, which is body politics in the Shi’a juristic teachings. Concerning the legal regulations and body politics surrounding marriage and slavery in Shi’a jurisprudence, I argue that a slave woman’s body in particular and slave-master sexual relations in general are less regulated and disciplined in the Shi’a juristic texts, in comparison with the body of a free woman. This argument may be surprising, as one might expect the opposite. Nevertheless, the slave has a less restrained body and sexuality. Although a slave concubine does not have sexual access to her own body and everything is considered the property of her owner, including her permissibility to marry another male slave, divorce him, or give a birth to a child, the juristic precepts define a larger domain in terms of sexuality. This difference reflects a juristic construct regarding the feminine body, which perceives a free woman as a reproductive body and a reproductive sexual partner in the institution of marriage.
There are two stipulations for the nikah (marriage) contract in Shi’a jurisprudence, which are directed to the woman. One is concerned with the virginity of the woman and the second one is concerned with her fertility and productivity. According to jurists Shahid Awal and Saani, although the beauty of women is asserted as one of the significant incentives in marriage, the Prophet Mohammad interdicted men from marrying with those beautiful women who are infertile (Shahid Saani 2011 Volume 9, 13). A close examination of such a recommendation manifests an essential difference between marriage and slavery. It also sheds light on the essence of marriage in the perspective of Shi’a jurisprudence. These incentives for finding a proper woman to marry fall into a juristic construct according to which the female body is conceived as a reproductive body. This body is expected to generate and produce the next generation, so that the generation of Muslims continues. There are several detailed rulings about the way sexual intercourse is to be exercised in a marriage contract. There are, however, only a few precepts concerning sexual relations with a slave among classical Shi’a jurists. I argue that there are fewer such regulations, because the master-slave relationship is unrelated to Muslims’ generation and, therefore, attracted less attention in comparison with the marriage contract, which is connected to the institution of the family in the society and to the productivity of the feminine body, which is to be brought to fruitfulness by the virility and potency of men.

In a marital relationship, it is recommended (mustahab) for the man to pray before engaging in a sexual act with his wife. He is also ordered to have his first intercourse with his wife during a night and not a day. Engaging in a sexual act around noon is absolutely disliked and offensive (makruh), unless it happens on Thursdays, as it is said that Satan does not approach the child who will be potentially born from this intercourse (Shahid Awal and Saani 2011 Volume 9, 17). There are many hadiths, in the prestigious classical Shi’a hadith books,
which recommend husbands and wives to engage in a sexual act on some specific nights, because, under the influence of astrology, it was believed that following such instructions could help the couple make good children.

Since marriage is to be a vital institution in the proliferation of Muslims’ generations, anal sex is disliked and offensive (makruh) in Shi’a jurisprudence. Some Shi’a jurists claim that this type of sex is absolutely disallowed in Islam, as there are some hadiths maintaining its absolute prohibition in Islam (Shahid Saani 2011 Volume 9, 31).

Sexual intercourse while the married couple is naked is makruh, because of the hadiths and narratives that Shahid Saani cited (Shahid Awal and Saani 2011 Volume 9, 21). The fear concerning the feminine body to which I pointed earlier can be entirely understood in this precept. This fear that I discussed in the context of hadd and ta’zir punishments as well as the mandatory hijab in the society, is rooted in this type of precept concerning sexual intercourse in a licit relationship between a wife and a husband. Shahid Awal maintains that while having sexual intercourse, it is makruh to look at the pudenda of the woman. This act is always makruh, but it is absolutely makruh if the man looks inside his wife’s pudenda. Shahid Saani says that some jurists declared that this act is haram (forbidden). According to a hadith, looking at pudenda of a woman while having sex, causes the potential child to be blind (Shahid Awal and Saani 2011 Volume 9, 21-22). The partners can look at one another’s sexual organs for judicial or medical reasons, “to examine the sexual organs of the zaani [the doer of zina] or woman in confinement” (Boudiba 1985, 37). This juristic precept is understood through a juristic construct that considers the entire body of a woman as ‘awra (pudenda), however, only the genitals of a man are considered as ‘awra. The limits of ‘awra are various in different schools of Islam, according to which the limits of hijab is determined. In Shi’a teachings, as it is stated in the juristic books of
Shahid Saani and Shahid Awals, ‘awra is considered the area between knees and navel for men, but the entire body of a woman, apart from her hands, feet (from her ankles down) and face are considered ‘awra (Shahid Saani 2011 Volume 10, 524). Leila Ahmed asserts,

The term ‘awra and in particular its usage with respect to woman's body (a usage which goes back at least to medieval times), implicitly ascribes to the female body in particular the qualities of negativity and shamefulfulness with which sexuality, in one of its aspects, is imbued in Arab culture. The term, which is derived from the root meaning "blemish" (and also has the meanings of "vulnerable" and "weak"), is used in particular to mean those parts of the body that religion requires should be concealed--the sexual parts--defined by some authorities as the male body from the waist to the knees, and for the female the entire body (Ahmed 1989, 45-46).

As Ahmed argues, the meaning of ‘awra, which is attributed to the feminine body in Islamic juristic discussions, is interwoven with the concepts of vulnerability, weakness, and shame that should be concealed. In Farsi (Persian), likewise, it carries the negative connotations of shame and fear that need to be hidden. According to the Moin Farsi dictionary, ‘awra means shame and nakedness as well as an act of which a person is ashamed. It is also debated in different Islamic schools whether or not women’s voices are considered ‘awra. As Bouhdiba critically argues, a Muslim woman’s voice is considered ‘awra, not only because of the sweet words coming out of her mouth, but also because her voice might create trouble and cause a zina. Those sweet words are better to be heard by her husband (1985, 39). It is not surprising, therefore, to confront such a ruling in which a couple, even in their most private time and place, are not allowed to look at the intimate parts of their body or pudenda, as the Shi’a jurisprudence suggests. Such rulings, which are frequently seen in Shi’a juristic texts, reflect the feminine body as a frightening body.

54 http://www.vajehyab.com/?q=%D8%B9%D9%88%D8%B1%D8%AA accessed on 24 Jun 2014.
The reason why an eligible sexual relationship should be understood under the reproductive bodies of women is found in the Qur’anic verse (2, 223) in which Allah reveals that, “[your] women are your planting place (for children); come then to your planting place as you please and forward (good deeds) for your souls, and fear Allah”. “Planting place” is a translation of Arabic term “hars”, which refers to planting agricultural resources in the Arabic language and has shaped Muslims’ collective unconscious for ages. This metaphor, which is clearly stated in the Qur’an, is one of oft-frequented metaphors in Islamic countries and has legitimized marriage because of its reproduction. In the juristic pattern that I have discussed, the most crucial factor that should be preserved and optimized concerning marriage is the reproductive functions of women. Islamic stipulations on marriage and its sexual relations, thus, are more than those on slaves. The relationship with a slave is outside of this pattern, because it is sexual exploitation, and its purpose is sexual pleasure, not reproduction.

As a blunt and detailed clarification, Shi’a jurists generally are in agreement that azl (pouring a man’s semen outside the women’s vagina or withdrawal method) is makruh when spouses have intercourse with each other, unless the opposite was already written in their stipulation. Shahid Saani asserts azl is makruh, as it contradicts the doctrine and philosophy of marriage, which is the pregnancy of women and continuing the Muslim generation. According to some Shi’a jurists, the act of azl is absolutely forbidden, as Shahid Saani discussed. Some believe that if a wife has consented, the act of azl for the husband is not forbidden (Shahid Awal and Saani 2011 Volume 9, 32). In general, if azl occurs, the husband should pay compensation to his wife for the sperm (Shahid Awal and Saani 2011 Volume 9, 32). A recent bill, ratified on June 2014 in Iran’s parliament, criminalized birth-control surgeries for men and women. According to the bill, people who are convicted of performing vasectomies and tubal ligations
can be imprisoned for two to five years\textsuperscript{55}. Two months prior to ratification, Ayatollah Makarem Shirazi called for the criminalization and prosecution of people who are involved with various forms of birth control, including ordinary people and physicians. He argued that birth control plans have been a trap for Iran set by the western countries. He voiced his concern about the decreasing population of Shi’a in some parts of the country and criticized the free and simple access to birth control pills. “We need to move towards increasing the rate of Shi’a population,” he said\textsuperscript{56}.

On the other hand, masters are not supposed to follow this instruction and regulation. They are free to act based on their desires, whether they want to use azl or not. This unique stipulation concerning the prohibition of azl is to be only for marriage, which is designed to propagate Muslims.

Shahid Saani also argues that marriage (nikah) of a man is makruh with a woman who is born out of wedlock (the child of an illegitimate sexual relation or the child of zina). However, engaging in sexual relations with a slave through milk yamin (what the right hand possesses) is not makruh and it is permissible to sleep with a slave who is the child of zina. It is, nevertheless, recommended that the man azl (uses the withdrawal method) to ensure that the slave, who was born from an act of zina, does not become pregnant.

Another ruling that indicates the less regulated body of a slave is the comment of Shahid Awal that while having sexual intercourse with a slave, it is not makruh if another momayez individual (in Islamic jurisprudence momayez refers to discerning minor or a minor person who

is not an adult and is able to comprehend information and distinguish between good and bad) is present in the room. However, it is makruh to engage in a sexual relationship with a free woman while a discerning minor is present. He also asserts that sleeping between two female slaves is not makruh; however, it is makruh in the case of free women (Shahid Awal and Saani 2011 Volume 9, 257).

The precept for iddah or period of waiting is also different between a free female and a female slave. Iddah is a religious waiting period that a woman has to observe after her husband’s death. Iddah is mandatory for women after their divorce as well, although it is out of the scope of this thesis. During the iddah period, women are not allowed to remarry. The jurists state in their resalahs that a widow, if she is not pregnant, must observe iddah for four months and ten days, which means she is not allowed to marry in this period, which is four menstrual circles. If she is pregnant, she must keep iddah until the birth of the child. It is haram (forbidden) for the woman, who is in iddah for the departure of her husband, to wear ornaments or makeup as well (Resalahs Nine Marjas 2011, 1392-1394). It is said that iddah is mainly ordered to ensure that the woman is not pregnant from her dead husband and to prevent other men from proposing to the widow during the given time. The texts are silent about the period after the departure of the wife and the rulings for the husband. As Shahid Awal maintains, iddah is four months and ten days for women, however this term for a slave is only half as long: two months and five days (Shahid Awal and Saani 2011 Volume 9, 220). Surprisingly, there is no supplementary information or orders concerning a widow slave after her master’s departure or any concern regarding the pregnancy of the widow slave.

In the discussion of hadd there is also such a rule, which is half punishment of a free individual. The Islamic punishment for those enslaved men and women who have sex with
someone who is not their master is much lighter, as they have to take fifty lashes for their illegal
sex. However, as I discussed earlier, it is one hundred for free men and women (Shahid Awal
and Saani 2011 Volume 13, 79).

   The foregoing shows that the body of a Muslim believer is less regulated and disciplined
in his sexual relation with his concubine than in his sexual relations with his wife. I have shown
how the regulation of the body of the (male) Muslim believer has in this case a profound impact
on the varied regulation of female bodies, which is the focus of this thesis.

   A cursory look at the juridical discussions on marriage reveals that many stipulations and
recommendations are legalized for marriage, according to which intercourse should follow a
specific and detailed pattern of instructions. However, slavery and its stipulations are basically
discussed in the margins, sometimes even just as exemptions. Let us bear in mind that according
to Shi’a Twelver teachings, men are restricted to marry not more than four wives; however, there
is no limit mentioned for possessing slaves, based on some Qur’anic verses, including Al Nisa
24. There being two licit sexual relationships in Islam, it seems that the nikah contract, which is
more disciplined, is regulated around the matter of the reproduction and fertility of the female
body, and the institution of family, but milk al yamin (what your right hand possesses or
intercourse with a slave) is less regulated and monitored as reproduction is not proposed in this
form of contract. Thus, it enjoys a freer domain for sexual relations.

The Weakness of the Feminine Body and its Mental Faculty

   An examination of the sexual assumptions behind the judicial and political premises of
Islamic jurisprudence concerning the position of women will show that women are constructed
and imagined as inferior beings who suffer from a defective mentality and a physically weak
body. These presuppositions have had considerable influence on forming the social order in Muslim countries, as they have had political functions, from the advent of the Islamic government of the Prophet Mohammad to the establishment of the Islamic republic in 1979, through which a patriarchal hierarchy of power has been stabilized. In this hierarchy, power is dispersed according to the masculine and male-based pattern of authority, and women have been placed on the bottom of this hierarchy. The main classical Sunni juristic schools, namely, Hanbali, Maliki, and Shafii, as well as Shi’a, namely, Twelver Imami Shi’a, are in agreement that appointing women to political and social positions is not recommended. This view, which, on a vast scale, is rooted in the perspective of the jurists that perceives women as weak and defective human beings, can be traced in various juristic discussions, including the witness (Shahed), the imam (leader), and inheritance (miras). Based on such perceptions, the incompetence of women for being assigned to social and political posts is addressed, directly and indirectly, not only in Islamic jurisprudence and hadiths, but also in the prior and more authoritative scriptures, namely the Qur’an, and Sunnah.

Mostly established after the Prophet Mohammad’s time, the view and practice of Muslims in general, and Muslim jurists in particular, have been negative concerning the political and social engagement of women in Muslim society. During the life of the Prophet Mohammad, women were actively engaged in political activities, such as participation in wars and the Muslim migration to Habashe.

To show the presence of women in important positions in the history of Islam, Sadeqi (2013) claims that there used to be women jurists (faqiheh) in the lifetime of the Prophet and in the time of the Caliphs that followed. For illustration, she points out that the second Caliph, Umar Al-khattab, despite his well-known distrust of women, entrusted the original volume of the
Qur’an to Hafsa bint Umar, his daughter and Mohammad’s wife (2013, 304). Mir-Hosseini (2010) maintains a similar argument concerning the presence and important role of women and the phenomena of women jurists and hadith transmitters at the time of the Prophet. “Women had been among the main transmitters of the hadith traditions, but by the time the fiqh schools were consolidated, over a century after the Prophet’s death, they had reduced women to sexual beings and placed them under men’s authority” (2010, 37). She also attributes the reduced presence of women to the biased and patriarchal reading of Muslim jurists from the Tradition of Mohammad and the Qur’an.

Leila Ahmed (1992) also writes about the presence of women at the time of the Prophet by referring to the key holders of Ka’aba. “With the conquest of Mecca, the Muslims received the key of the Ka’aba, which at the time was in the hands of Sulafa, a woman. According to Muslim sources, Sulafa’s son had merely entrusted her with it for safekeeping, just as Hulail, the last priest-king of Mecca, had previously…entrusted his daughter Hubba with the key” (Ahmed 1992, 58). Ahmed argues, although there is no trace of any other women in the Islamic sources as key keepers, these two women’s role in the Islamic archives shows Muslim suppositions projected onto the society at the time of the Prophet (1992, 58).

Another significant instance showing this social and political engagement is that the Prophet asked for the allegiance of women and the political opinions of women in Islamic government (Sadeqi 2013). The allegiances had an influential role in the Islamic community. But the Saqifah bani Saidat created a turning point in the political and social role of women in Arab society. Saqifah bani Saidat is the name of a house within which Muslims gathered to decide the leadership of the Islamic community on the very day that the Prophet passed away (630 CE). There is no evidence of women participating in electing the successor of the Prophet in Saqifah,
and, in the aftermath, the roles of women were reduced in a way that cannot be compared with the era of the Prophet. Women, therefore, were not supposed to swear their allegiance to the first three successors of the Prophet, namely Abu bakr, Umar Al-khattab, and Uthman\textsuperscript{57}. “After the \textit{Saqifah} incident, maleness, such as being from the Quraysh tribe, became the precondition of the caliphate implicitly and later explicitly” (Sadeqi 2013, 335). The political role of women gradually became diminished, if not extinguished. This ever decreasing political influence of women is clearly evident in the first centuries of the formation of Islamic jurisprudence, during which women were deprived of the privileges they had had in the time of the Prophet, as Sadeqi argues (2013). The Shi’a jurisprudential texts and teachings were being constructed and then stabilized as a highly patriarchal one in this period. For illustration, most of the jurists of this period had declared \textit{fatwas} (legal rulings) according to which women should not become involved in political and social activities. The Qur’anic verse of 4, 34 is the verse most cited by the jurists in this period. In this verse Allah states,

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

The Arabic word “\textit{qavaamun}”, which is translated as “maintainers”, has caused endless discussion among Islamic jurists, as some interpreted it as the domination of men over women, some deciphered it within the concept of guardianship of men over women, some argue that it refers to the right of men to divorce a woman, and, finally, some applied it to the permissibility of a man marrying four women (Shams Aldin 2009, 64).

\textsuperscript{57} Political allegiances of women, however, were taken by Ali, the fourth successor of the Prophet.
Some Muslim feminists argue that this verse can be read in an unbiased and egalitarian way. Kelicia Ali discusses different views, concluding “While classical and medieval interpretations of this verse stress female obedience and male authority, recent interpretations tend to emphasize the financial component of men’s marital duties and the limits on a husband’s power over his wife (2006, 117). Some commentators pay attention to “male perfection” and “female deficiency” rather than emphasizing the financial obligations of men. Some others interpret the verse as “male superiority as a given”. However, they acknowledge the responsibility of the husband to support his wife (2006, 118).

Sheikh Tabarsi, one of the most influential Shi’a jurists, argued that men in this verse are mentioned as the maintainers of women due to the fact that men’s wisdom, knowledge, and decision-making abilities are much superior to those of women. Men also pay for the alimony and dowry of women (Sadeqi 2013, 337).

Another example that portrays and reinforces the notion of “the weakness of the feminine body and its mental faculty” and its consequences for the social position of women such as the role of “witness”, as well as the right of women in inheritance, is a famous sermon of Imam Ali, the first Imam of Shi’a,

O ye peoples! Women are deficient in Faith, deficient in shares and deficient in intelligence. As regards the deficiency in their Faith, it is their abstention from prayers and fasting during their menstrual period. As regards deficiency in their intelligence it is because the evidence of two women is equal to that of one man. As for the deficiency of their shares that is because of their share in inheritance being half of men. So beware of the evils of women. Be on your guard even from those of them who are (reportedly) good. Do not obey them even in good things so that they may not attract you to evils (Nahjol-balaqah, Sermon of 79).

Taking into account that Nahjol-balaqah, the collected sermons of Imam Ali, is one of the important sources for Shi’a jurists, this piece portrays the shortcomings of women from the
perspective of the first Imam of Shi’a. By an Islamic juridical ruling, women are not allowed to pray and fast while they are on their menstrual period. Imam Ali attributed this judicial precept to the deficiency of women in their faith. He also explicitly proclaims the insufficiency of women in intelligence and considers this weakness the reason why the share of inheritance for women is half of that of men.

Sheikh Sadooq addresses the weakness of women; narrating a *hadith* that “Friday Prayer is not obligatory for nine groups, including the elderly, the mad, the ill, and women” (Sadooq 1362, 644). Here one can clearly see that women are classified with other minorities such as sick persons and mad people for practicing a Friday Prayer. It is said to be a difficult and long congregational prayer at that time, and the explicit exclusion of women from this obligatory practice makes it implicitly understood that they are weak or even disabled. These anti-women statements in which women are considered as the inferior gender in terms of their knowledge, intelligence, and wisdom have had long-term effects in the formation of Shi’a jurisprudence. In what follows, I will discuss how considering women as inferior and weak beings is dispersed throughout Shi’a juridical texts in three major discussions: *shahed* (witness); *imam* (leader in congregational prayers); and *miras* (inheritance). Mujtahids claim these rulings as Allah’s words, due to countless *hadiths* and Qur’anic verses with clear meanings (*nass*). It seems, however, the juristic rulings which were mostly created years after the time of the Prophet, are based on an understanding of Muslim jurists, which is not necessarily fully compatible with the Qur’an and the Prophet’s deeds.

**Shahed (Witness)**

The majority of Muslim jurists believe that women are not allowed to be appointed as *shahed* (witness) in a court on an equal level to men. In the discussion of *Shahed* (witness), two
women are considered equal with one man. Shi’a jurists have frequently cited a particular Qur’anic verse to justify this ruling. The Qur’an clearly states, “call to witness two witnesses of your men, if the two are not men, then a man and two women from the witnesses whom you approve; so that if one of the two errs, one of them will remind the other” (2, 282). As one can see, the text of the Qur’an evidently speaks of the potential errors in women’s testimony. To solve this issue, two women are equated with one man in an Islamic court. In case a female witness forgets or errs in her testimony, the second witness would remind her. It should be noted that female witnesses basically are not accepted in major juridical issues such as marriage, divorce, and hudud. This restriction occurs because men are able to witness and testify by themselves. As Shams Aldin puts it, women are allowed to be witnesses only for female matters, such as virginity, pregnancy, and the sexual deficiencies of women, for which men, evidently, are not able to be witnesses (Shams Aldin 2009, 29). This view of women has played a crucial role in considering women as a naturally inferior gender that could not perform well in the social order of Islamic society. Shi’a juristic teachings contemplate a high possibility of amnesia and error in the testimony of women; however, this is not an issue in the case of men. Such rulings, on which most jurists are agreed, are grounded on a basic assumption, according to which women are considered incomplete beings

**Imamat in Praying (Leadership in Congregational Prayers)**

The discussion of whether or not a woman could be an imam (leader) in congregational prayers is of great significance, because of its direct impact on discussions concerning the political role of women in a Muslim society. Since women are kept from being imams in

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58 For further evidence of this claim among former jurists, the reader is encouraged to consult Tabarsi (1408), Toosi (1344) and Sheikh Sadoogh (1362).
congregational prayers, many jurists argue that women could not exercise the privilege of being politically sovereign, which is uniquely considered for men (Sadeqi 2013, 332). According to the resalahs of current Shi’a Iranian Mujtahids, including Grand Ayatollah Sistani and Safi Golpayegani, there are conditions for appointing a person as imam for congregational prayers. An imam must be an adult, male, wise, Twelver Shi’a, just, and of legitimate birth. As a precautionary obligation (Ehtiyat Wajib), a man must be appointed as imam even for women’s prayers. Ayatolah Makarem Shirazi authorizes women to be leaders only if women are attendees of congregational prayers (Resalahs of Nine Marjas 2011, 803). The reason why women cannot be leaders in congregational prayers is not clearly stated. The last comment concerning the precautionary obligation of a woman to be a leader for female prayers in congregational prayers may reflect the hidden assumption of such a ruling, which is not based on any sexual reasons; for example, because of the potential temptation a female poses for male prayers when she stands in front of the men as a leader in a congregational prayer. Rather, the restriction occurs because women are implicitly requested not to acquire high political, religious, and social status in a Shi’a society, as they are considered to be an inferior gender; let us bear in mind that a leader of congregational prayers has always had significant political and social privileges in the course of Islamic history. Traditionally, such leaders in mosques have had respectable roles in the Islamic societies⁵⁹.

⁵⁹ For more evidence see Shams Aldin (2009), Ayatollah Alame Tabatabayi (?), and Sheikh Sadoogh (1362).
Miras (Inheritance)

Islamic juristic arguments concerning inheritance have been among the most controversial. The discussion of inheritance in Shi’a jurisprudence is an example that reinforces the notion that women are perceived as incomplete beings in the eyes of Shi’a jurisprudence.

Some maintain that the rulings concerning inheritance are rooted in non-egalitarian Islamic principles and the general preference of men over women in Islam (for example, Anwar Hekmat 1997). Some debate that Islamic rulings regarding the issue of inheritance and women are progressive in comparison with the pre-Islamic traditions of Arabs that did not allocate any share of inheritance to the women (for example, Fatemeh Sadeqi 2013). The Qur’an states,

O you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take [back] part of what you gave them unless they commit a clear immorality. And live with them in kindness. For if you dislike them - perhaps you dislike a thing and Allah makes therein much good. But if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin? And how could you take it while you have gone in unto each other and they have taken from you a solemn covenant? (4, 19-21).

In the sura Al-Nisa the Qur’an also says: “And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease (4, 4). In the above verses, the Qur’an suggests the appropriate and just way of dealing with women in regard to alimony and inheritance.

Regarding the amount of inheritance and dividing the shares, the Qur’an declares,

Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit.
[These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise (4, 11).

On the one hand, the clear text of the Qur’an proposes that the share of women in inheritance is half that of men. On the other hand, the Qur’an puts a stress on the moral and just attitude of men towards women concerning this issue. In the juristic teaching of the following next centuries; however, there is less concern with the social and moral contexts of suras, and the focus is mostly on the appearance/surface of the verses, which suggest that women receive half that of men in inheritance.

According to the resalahs of prominent Iranian Shi’a Mujtahids, including Ayatollah Khomeini, Khamenei, Sistani, Makarem Shirazi, Behjat Fomeni, and Fazel Lankarani, if a dead person whose possessions would be inherited by his or her children, has one son and one daughter, the entire possession is divided into three equal shares according to which a son would inherit two shares and a daughter would inherit only one (Resalah Nine Marjas 2011, 1543). These resalahs also declared that if a dead person has only one sister and one brother, a brother inherits two-thirds of the entire property of a dead person (Resalah Nine Marjas 2011, 1543-1544). This inequality is also visible in the discussion of inheritance between wives and husbands: if a wife passed away, her husband would inherit half of her possession and other inheritors would have the rest. But if a husband passed away, his wife could only have one-fourth of the property of her husband (Resalah Nine Marjas 2011, 1556).

Similarly, according to classical Shi’a jurists Shahid Saani and Shahid Awal, inheritance is not equally distributed between men and women in Islamic jurisprudence, and this inequality is based on the clear text of the Qur’an and various hadiths in this regard. Fathers, mothers, sons, and husbands have the best share (nasib a’laa) in inheritance. Daughters and wives, however,
have the lowest share (nasib asfal) (2011 Volume 12, 202). Although mothers belong to the higher class in inheritance, it should not be forgotten that mothers enjoy such a status because of the significance of motherhood in Islam, not because of them being female. Motherhood is a much appreciated position in the course of Islamic jurisprudential history. The Muslim jurists have tended to restrict Muslim women by emphasizing the significance and even sacredness of motherhood in Islam. Being a mother, one has to spend much of one’s time at home to nurture children, prepare meals, and manage indoor household activities, which result in the woman being less involved in political and social activities. This is the reason that mothers receive more shares in inheritance, which is the same as the share of fathers. However, this rule does not apply to other pairs of males and females. To put it differently, a brother and a sister or a son and a daughter do not receive equal shares in inheritance. A husband and a wife are also not given equal shares. In these three cases, the male receives two-thirds, while the female receives only one-third. The only exception to this rule is for mothers, who receive an equal share with the fathers (male).

Shahid Saani named eight constraints of inheritance including but not limited to: kufr, zina, murder, and being a slave. The first one, kufr, is informative for my argument here.

*Kufr* in Arabic means covering or concealing something. According to the Islamic dictionary,

In Shar‘i terminology it means, ‘not believing in Allaah and His Messenger, whether that is accompanied by denial or it is not accompanied by denial but rather doubt, or turning away from faith out of jealousy or arrogance, or because one is following whims and desires that prevent one from following the message’. So *kaafar* is the attribute of everyone who rejects something that Allaah has commanded us to believe in, after news of that has reached him, whether he rejects it in his heart without uttering it, or he speaks
those words of rejection without believing it in his heart, or he does both; or he does an action which is described in the texts as putting one beyond the pale of faith.  

According to the Islamic dictionary, *kaafar* means ‘unbeliever’. “It is not meant as a derogatory label” (unless it is used by a Muslim against other Muslims). There are several examples of *kaafar* according to the Islamic dictionary: First, there is a disbeliever in Allah, in His Oneness, and in His final Messenger, Mohammad (such a person is an apostate from Islam). Second, a Muslim who disbelieves in a necessary tenant of Islam such as one of the five pillars of the religion of Islam, can be considered a *kaafar*. Third, there is an originally non-Muslim person who denies the religion of Islam but who knows that it is true. Forth, a disbeliever in Islam since he or she follows another (monotheistic) faith can be considered a *kaafar*. Fifth, there is a person who practices another (monotheistic) religion and knows nothing about Islam. Sixth, there is a person who believes in many gods (polytheist). Seventh, there is an agnostic who is a monotheist. He or she is considered a lesser *kaafar* comparing with a polytheist. And finally, an atheist who is considered the ultimate *kaafar*. “Generally a Christian or Jew is not identified as a *kaafar* but they are known respectfully as *Ahlul kitab* - People of the Book(s), and Islam considers their religions valid, but once they find Islam they are expected to follow the updated covenant sent by God.”

In Islamic jurisprudence, the common view among jurists has been that a male apostate must be put to death, unless he is a child or suffers from a mental problem. A few jurists claim that the death penalty is a newly fabricated element of Islam that did not exist in early Islam in

\[\text{60} \quad \text{http://islamqa.info/en/21249, accessed Jun 7 2014.} \]
\[\text{61} \quad \text{http://www.islamic-dictionary.com/index.php?word=kafir, accessed June 7 2014} \]
\[\text{62} \quad \text{The majority of the Shi’a ulama believes that whoever denies the existence of God and the prophecy of Mohammad, or the Day of Judgment is considered *kaafar* or disbeliever (For more detail see Koleini, 1995, 5; Haqani 2004, 144). Some believe that a person who denies the Imam Ali as the first Imam of Shi’a is considered a *kaafar* (Hafez 2010, 65). According to such a view, Sunnis are considered *kaafar*.} \]
the way it is exercised today. For example, Ayatollah Montazeri (1922-2009), a prominent Iranian reformist Shi’a jurist who was placed under house arrest by the Islamic regime of Iran for nearly a decade, argued that the death penalty practiced at the time of the Prophet was used to combat political schemes against Muslims. He argues that such a punishment is not supposed to be exercised against people who simply convert to another religion after investigating and studying about it, although he still argues that capital punishment should be reserved for apostates who abandon Islam out of enmity and hostility towards the Muslim community.63

Considering the concept of kaafar, Shaahid Saani, a Twelver Imami Shi’a jurist, commented that no kaafar is legally allowed to inherit from a Muslim, but, a Muslim can inherit from a kaafar, even if he or she is not the closest relative to the kaafar who passed away. Although the sentence for apostasy (ertedaad) in Islam, as a form of kufr, is the death penalty based on the Qur’an (for example 4, 89) and various hadiths and Sunnah, an apostate woman has a different sentence than an apostate man in Shi’a jurisprudence. “Women are not sentenced to death, because of their apostasy (ertedaad), although men should be killed, if they convert from Islam to another religion or faith” (2011 Volume 12, 129). As Shahid Saani argues, this difference in punishment is justified “because women have short intelligent and are unable to think sufficiently. An apostate woman may be imprisoned, poorly nourished, and beaten during the salat (daily prayers) so that she either repents from apostasy and comes back to Islam or dies” (2011 Volume 12, 129). This clearly indicates the fundamental statement, according to which women are weak and incomplete beings and Islam gives them a chance for a second

thought. In contrast, according to Shi’a jurists, including Shahid Saani and Shahid Awal, there is no chance for an apostate person [man] to repent (2011 Volume 13, 278).

The underlying reasons for these unequal fatwas are not discussed explicitly in the resalaha, as they are a form of non-deductive jurisprudence, as discussed in the second chapter. In semi-deductive juristic works including the books of Shahid Saani and Shahid Awal, however, one can see between the lines that women are perceived as incomplete beings in the discussions of imams, witness, and inheritance. This argument concerning women that is embedded in the language of Shi’a juristic texts plays a highly influential role in forming the patriarchal hierarchy of power in Shi’a jurisprudence and subsequently in Iranian society, whose laws are based on these texts. The hidden main reason for issuing these fatwas is that women are inferior to men in their wisdom, knowledge, power, and understanding. By considering women as the inferior gender in terms of their knowledge and wisdom, men do not tend to offer women major responsibilities in a society, and consequently women have been kept shuttered indoors.

It is evident historically that the subjugation of women is not restricted to the language and presentation of Shi’a juristic books, but one should consider the ways in which these notions are dispersed inter-subjectively in the unconscious of Iranian society where women cannot be selected as a Supreme Leader, or president. They cannot be members of the Assembly of Experts of the Leadership, or of the Guardian Council, which are important political positions in Iran. Since the Islamic revolution of 1979, there has been only one woman appointed as a minister in the Cabinet of Iran.\(^64\)

\(^{64}\) Marzieh Vahid-Dastjerdi was an Iranian university professor who was the minister of health and medical education in Iran in Ahmadinejad’s cabinet in 2009. Although she belongs to a conservative
As I have discussed in this chapter, the feminine body has been one of the crucial matters and subjects of juristic rulings. Rulings concerning veiling, sexual intercourse, the regulation of presence in public spheres, and many other restrictions have been imposed on women’s bodies more severely than on men’s bodies in Shi’a rulings. The body of a woman, its presence, and her independence in decision making in regards to her body is the site of fear. Islamic jurisprudence perceives woman in a more bodily fashion than man in various issues such as hijab and ‘awra. Indeed, this jurisprudence is all about body politics and body regulations based on gender, as I have shown in various discussions of hijab, witness, imam, and inheritance.

In this chapter, I have tried to show how such body politics are articulated in Shi’a juristic teachings and how women’s bodies and their sexualities are conceptualized in Shi’a jurisprudence. Most importantly, I have provided the evidence to demonstrate the main constructs on which the feminine body is built in Shi’a jurisprudential texts. Shi’a juristic constructs understand and represent the female body as a site of potential crime, lust, evil, weakness, and harm to society, while also seeing it as a site of biological reproduction that itself must be closely controlled and regulated.

I have shown that the Shi’a juristic rulings are to be located in a certain political economy and regulation of the body. It is always the body that is the matter. Although one can trace moral and mental effects of the religion in the course of its history, have not the bodies and its forces, instead of our cognition, understanding and subjective imaginations, been the major concern,

political faction, after receiving an approval for her appointment, she said, “Women reached their long standing dream of having a woman in the cabinet to pursue their demands. This is an important step for women and I hold my head high. Women must have a greater role in the country's affairs, noting that half of health ministry employees are women, while there are 1.6 million female students in the country” (http://www.gulf-dailynews.com/NewsDetails.aspx?storyid=258885, accessed 10 Jun 2014). In December 2012, she was removed from her position, because of difference of opinions with president Ahmadinejad.
intended or not, of Shi’a jurisprudence? Have not bodies and their utilities, docilities and subjugations been the concern of the juristic teachings? Could this concern not lead us to say that the history of Shi’a jurisprudence in this area of concern has been the history of bodies?

In the next chapter, I will examine what I have provided so far concerning the Shi’a jurisprudential rulings through the lenses of a French thinker, Michele Foucault, who was also concerned, albeit in another context, with the question of the body and its politics of regulations.
Chapter Four: Reading Shi’a Jurisprudence as a Discourse

*Political power is like the sun; everyone can see it, nobody can look straight at it, it has taken centuries to “discover” it, and it is not finished yet!*

*Henri Lefebvre*

In this chapter, I will elaborate on my methodological approach for reading the Islamic juristic texts. I have decided to reverse the common way of placing a methodology chapter ahead of the analysis of the phenomena, since I believe that a researcher observes a phenomenon first and then obtains an appropriate methodology to organize her or his observations. I will point out two common frameworks for studying Islam and Islamic cultures, namely, the traditionalist approach and the orientalist approach. I will consider the shortcomings of these two, based on their assumptions. I will consider the benefit of discourse analysis for my thesis and Foucault’s framework and terminologies, which are formed around the notion of the body.

I have found this framework to be a persuasive basis to realize and think about my question and establish my conceptual articulation of the various forms of Shi’a juristic constructs concerning the feminine body that I have discussed in the previous chapter. Using Fairclough and Wodaks’ observations on discourse, alongside Foucault’s, I will discuss my discursive methodology, based on statements of a document, in the Foucauldian sense, which I have pursued in the previous chapter.

Based on the arguments in that chapter, I aim to show how Shi’a jurisprudence, with a focus on the texts that I have chosen, discursively produces, reproduces, and represents female subjects and their bodies as criminal, reproductive, lusty, fearful, and weak through the language and power embodied in the texts. Considering Shi’a jurisprudence as a discourse, I argue that
this discourse is based on some basic statements, in Foucauldian terminology, that construct the feminine body as weak, criminal, lusty, and defective.

The body with which we deal in everyday life, the one that we dress, with which we eat, appear in public, practice norms, and exercise regulations and religious rituals, has been a topic of study for the past nearly five decades in the social sciences. The body, as anthropologist Mary Douglas maintains, is a provider of “a basic scheme for all symbolism” (Douglas 2003, 202). Susan Bordo believes it is a “medium of culture” (Bordo 1997, 309). Pierre Bourdieu (Bourdieu 1991) and Michel Foucault (Foucault 1995) claim it is a means of social control and of exercising power.

Women have been made to represent and practise the value of their societies through their bodies, whether they live in the ancient political systems of China (foot binding<sup>65</sup>), or India (Sati<sup>66</sup>), or in current political systems, whether an Islamic theocratic system (Burqa or Niqab in Saudi Arabia), an Islamic republic system (hijab in Iran) or in secular western counterparts (physical fitness, physically revealing fashion). This binary may or may not be the case in some cultures and times. Such a binary is missing and the relations and statuses are differently conceived than through western notions of gender, for instance, in Yoruba culture before confronting European cultures, as Oyeronke Oyewumi discusses (1997), or in Iranian society before 19th century, as Afsaneh Najmabadi (2005) argues. As Najmabadi claims, the harsh binary between men and women appeared as a result of the confrontation of Iran with European cultures, which formed a new western understanding of gender among people. However, this

<sup>65</sup> Foot binding is said to be rooted among Chinese upper-class court dancers. It refers to the custom in which painfully tight binding is applied to the feet of young girls to prevent their feet from growing, as large feet were a symbol of peasants who work in the fields.

<sup>66</sup> The practice of self-immolation that a recently widowed woman practices on her husband’s funeral.
binary has always been very much a part of Iranian Shi’a Islamic culture, and I believe it is justified that we consider approaches that accept this binary for the conceptualization of gender.

Woman, “an evil necessary for reproduction and other male needs,” is assessed and judged against the norm of man, “the active, strong and moral half of a human whole” (Bailey 2003, 99). Woman has been considered a biological deviation from the norm of man. This consideration results in an inferior position biologically for woman. In this way, Balsamo claims that women are seen as “victims of a pathological physiology” (King 2004, 31). Aristotle, for example, believed that a woman is “afflicted with natural defectiveness,” and Thomas Aquinas viewed a woman as an “imperfect man” (King 2004, 31). The old argument is that men, who are rational and thinking subjects, represent culture; women, however, embody nature, which is emotional and concerned with physical needs. During the last decades of the 20th century, philosophers and social scientists started to think about the means that are used for employing power in the sexual lives of people. Scholars such as Michel Foucault, Jacques Lacan, and Marcel Mauss argued that culture and politics could be the main inhibitors of sexuality. They showed that one of the most impressive domains in which power has been exercised is human sexuality. Consequently, new perceptions of sexuality began to form among sociologists and other scholars.

By the close of the 20th century, the body had become a key concept in political, social, cultural and economic analysis. With the start of the modern feminist movement in the west, many scholars began investigating notions of women’s bodies and the influence of these notions on women’s everyday lives in various arenas, namely politics, society, medicine, education, literature, work, and home. In the 1970s, Middle Eastern and western scholars and feminists started writing about sexuality and the body in Middle Eastern cultures. In particular, several
such feminist writers have found many appealing aspects in the writings of the French sociologist, Michel Foucault. The issue of the female body is important, as it is at the center of relations and interactions between multiple, interweaving powers in micro and macro levels of life. Of interest as well is how women have understood their bodies in the course of different eras in the history of various countries. In this thesis, I have considered the tradition of such understanding in Iran.

Many scholars from all over the world have studied the Islamic tradition, using various approaches. The framework that such scholarship has used can be sorted into two main categories, namely, the orientalist framework and the traditionalist framework. As the majority of research conducted in the field of Islamic Studies has generally been in one of these two schools of thought, I will explain them briefly, unfolding their assumptions and indicating their weaknesses. Finally, I propose a framework and channel that I have found appropriate for working on the topic of this thesis.

**The Orientalist Approach**

Orientalism refers to a body of research conducted by western and Muslim scholars that is based on western epistemological and philosophical foundations. In the nineteenth century, European scholars began employing historical, theoretical, and phenomenological methods that had been obtained in their scholarly investigations of particular European questions, in the context of Islamic countries, which were home to cultures previously unknown to these Europeans.
Edward Said (1979) argued about orientalism that it is:

A style of thought based upon an ontological and epistemological distinction made between “the orient” and (most of the time) “the Occident”. Thus a very large mass of writers… political theorists, economists… have accepted the basic distinction between East and West as the starting point for elaborate theories, epics, novels, social descriptions, and political accounts concerning the Orient, its people, customs, “mind”, “destiny”, and so on (1979, 2-3).

This style of thought occurred due to the epistemological break and methodological shortcomings among Muslim thinkers at that time. Such shortcomings made them unable to critically confront their tradition in order to help it to flourish, as Feirahi (2012) argues. Said attributes Orientalism to “a particular closeness experienced between Britain and France and the Orient”, starting from India and the “Bible lands” and that developed to other parts of the Orient by World War II (1979, 4).

Not surprisingly, these efforts met serious challenges, as the West created a new Islam instead of understanding the Islam that actually existed in the Orient. As Muhammad Argon argues (Feirahi 2012, 33), Western orientalists considered Islamic thought and Middle Eastern culture to be a marginalized rationality deriving from the Greek-European tradition of thought. He also argues that the orientalists did not interpret Islamic civilization as an individual and independent historical phenomenon; it was perceived, instead, as a distorted and deviated form of Greek culture. For instance, he claims that Islamic jurisprudence was conceived as a copy of Roman law; its uniqueness was neglected, and its common characteristics across various Islamic traditions were exaggerated. In this approach, the Islamic tradition, customs, rituals, beliefs, its theology and philosophy, its magnificent architectural achievements, and, finally, its identity are seen through the Western lens. Western scholars, thus, created an Islam that was not necessarily the historical Islam.
This approach has had a long-term influence on Muslims intellectuals in Islamic countries. For instance, one could frequently find an orientalist approach among Iranian intellectuals, including in their social and political demands during the Constitutional era. Iranian intellectuals such as Hassan Taqizadeh strongly believed that Iranians should rebuild their identity by becoming completely westernized and entirely overwhelmed by modernity in a western sense, if they want to progress (Keddie 2003, 181). A considerable number of contemporary prominent Iranian thinkers living inside and outside of Iran share this orientalist approach. Bonn University graduate, Dr. Aramesh Doostdar (1931-present), whose best-known book is *Emtena’e Tafakor Dar Farhang Dini* [Impossibility of Thought in Religious Culture] (1991), and Sorbonne University graduate, Dr. Seyyed Javad Tabatabaee (1945-present), whose best-known books are *Zeval-e Andishe-ye Siasi dar Iran* [The Decline of Political Thought in Iran] (2004), and *Ibn Khaldun va Ulum Ejtemayi: Vaziyat e Ulum-e Ejtemayi Dar Tamadon-e Islami* [Essay on Ibn Khaldun and Social Sciences: The Situation of Social Sciences in Islamic Civilization] (1995), are among them.

Most researchers on Islam and Middle Eastern countries using an Orientalist approach step out of the Islamic tradition, relying on a modern western mode of thought. As outsiders, they raise questions about the Islamic tradition to which, most of the time, they cannot find relevant and appropriate answers, and, therefore, end up with various theories of decline. The Orientalist pattern of such research, therefore, presents the history of thought in the Islamic world as backward and retrogressive. The main weakness of the Orientalist view is that the self-reflection of Orientalist scholars does not arise from within their mode of inquiry, so that their critiques are not immanent. Rather, it begins with a European self-reflection imposed from the
outside. As the foundations of this view come from the outside (West), the framework articulated by this view (orientalism) may be fictitious and false.

In my view, the Orientalist approach suffers from serious epistemological disadvantages. Although it is still omnipresent in much research on the so-called Orient, it is not of use in my thesis. I maintain that the Orient has its own language, tradition of thought, potentiality, dreams, and imaginaries that need to be released from the Occident’s gaze to break its silence. Considerations of gender, gender roles, and patriarchy in the Iranian context need to be understood through this language, thought, etc., rather than through Western/Orientalist frames. More important than its theoretical and academic defects, inspired by Said, I believe that Orientalism is, “more than an airy European fantasy about the Orient” (1979, 6). It is a fabricated and exotic body of theory as well as practice, which has resulted from the political superiority and subsequently economic and cultural hegemony of the West during the contemporary period, and it can provide a seedbed for dogmatic approaches, various forms of racism, and imperialism.

**The Traditionalist Approach**

The term, tradition, “emphasizes the notions of continuity, stability, and venerability; and stresses the body of collective wisdom embodied in the tradition of the group” (Gould and Kolb 1964, 723).

Most Islamic jurists and Mujtahids as well as some non-clerical thinkers criticize the modern age and try, to the best of their abilities, to return to the Islam of the time of the Prophet, Imams, and first religious scholars. Abu Ishagh Shatebi (Feirahi 2012, 37) discusses the scholars who have studied the Islamic tradition using the traditional methodologies and who believe in the priority and authority of early scholars and pioneers in the study of Islam. Based on such a
principle, they acknowledge the understanding of the pioneers concerning the sacred texts and
they accept the Islamic early tradition as necessarily better than the opinions of later and
contemporary scholars. They conservatively resist reforms within Islamic doctrines. They are
reluctant to accept the modern notions of gender equality, sexual freedom, freedom of speech,
democratic political systems, and secularization. They refuse any attempt to reconcile Islam with
these modern values. For instance, Ayatollah Mohammad Taqi Mesbah Yazdi\textsuperscript{67} and non-cleric
Habibollah Asgaroladi\textsuperscript{68} are well-known in Iran for being the enemies of modernity in this way.
Based on such presumptions, the research conducted by such researchers, whether they are
opponents of the Islamic Republic or not, fall into this category, including official and
governmental researchers as well as non-governmental researchers in hawza \textquoteleft ilmiyya\textsuperscript{69}.

Apart from the perilous political consequences of this view, the traditionalist approach
has a serious epistemological problem. Traditionalist methodology, which relies on the tradition
as a primary characteristic of life and society, is unable to distinguish between subject and
object. When someone wants to study a subject, he or she should be able to observe the
phenomenon objectively. The phenomenon should be investigated without biased judgments and

\textsuperscript{67} Mehrzad Boroujerdi introduces Mesbah Yazdi as “an ultra-conservative senior ayatollah who serves as
spiritual guide to many conservative clerics and politicians. Reputed as the only senior ayatollah who
kisses the foot of the Supreme Leader. Mesbah-Yazdi is mentioned as a possible future supreme leader…. Mesbah-Yazdi has been a member of the High Cultural Revolution Council and also heads the Imam Khomeini Educational and Research Institute” (http://iranprimer.usip.org/resource/irans-political-elite accessed on 12 May 2014). He is also a member of Assembly of Experts, which is a community of clergymen in charge of choosing a Supreme Leader.

\textsuperscript{68} Asgaroladi is a “Heavy weight in the conservative political camp. He served for many years as the
secretary-general of the Islamic Coalition Party (Hezb-e Mo\textquoteleft talefeh-ye Eslami), the supreme leader’s
representative on the Imam Khomeini Relief Committee (the biggest governmental charity serving 10
million poor people), a member of Parliament, the commerce minister (1981–1983), and a member of the

\textsuperscript{69} Hawza \textquoteleft ilmiyya is a seminary or traditional Islamic school of higher education where clerics are trained. Qom Hawza, which Michael Fischer rightly describes as the “heart of Shiite Iran”, has been one of the crucial sources of political power in Iran.
pre-made answers. The traditional thinkers already sincerely rely on traditional Islamic principles and believe in defending Islam against what they perceive to be modern threats. Thus, one can argue that they do not take a position of impartiality, which seems to be necessary for research. Their methodology, therefore, essentially suffers from two methodological problems, as Feirahi has argued. The first shortcoming concerns the lack of critical orientation and the second one refers to the absence of an historical perspective and outlook in the approach (Feirahi 2012, 39-40). Such approaches, therefore, do nothing more than revive the tradition in similar forms without serious self-reflection.

What are the general characteristics of the Muslim traditional view that have caused such problems? One of the characteristics, undoubtedly, is a strong orientation to the past. Tradition essentially has a tendency to control the time, which is oriented to the past. This past is reconstructed in a way that has remarkable influences on arrangements in the present and the future. This approach is not in absolute opposition to change, but it does control and determine the orientation of a given change, and it tends to reduce the speed of change in society (Feirahi 2012, 40).

Another trait of the traditionalist approach is that it owns a specific language and plan, in which a regulated truth and legitimacy of a tradition is produced and reproduced. In the case of jurisprudence, the traditional discourse presents a specific formation of juristic knowledge, in which it not only honours its own guards, but also provides strong tools in order to preserve its inner cohesion and solidarity and reduces disagreement among its interpreters. Usul al fiqh (principle of jurisprudence) and other norms and regulations discussed in the second chapter, are some of the tools used to control and decrease disagreement in interpretations of the Islamic tradition. Domination and hegemony of the existing interpretations of Islamic tradition, which
are rooted in the characteristics of the rulings and the personal sacredness of interpreters, serve to ignore the historicity of rulings and prevent critical questioning of the tradition (Feirahi 2012, 41-42).

Feirahi (2012) also points out two traits of the tradition that disclose the problematic aspects of this approach. The first is the tendency of the traditional approach to be united with the religion (in the sense of Shari’ah law). The juristic tradition in Islamic countries has tended to be united with the religion. This has resulted in the tradition being held sacred, thus limiting toleration regarding any reform within its domain. Nasr Hamed Zeid claims that the traditional texts in Islamic civilization, in theology or jurisprudence, have had an authoritative position that slows down reforms, as new interpretations must adapt themselves to official (traditional) interpretations (Feirahi 2012, 43). Although the juristic tradition deconstructed and interpreted selective parts of the sacred texts at the time of its formation, its proponents now claim these interpretations to be united with and equally valued with the religion i.e. the sacred texts.

Ziba Mir-Hosseini (2010) similarly attempts to show this contradiction of mixing man-made juristic tradition with Shari’ah law. She scrutinizes the existing traditional reading of Islam, asserting “The defense of patriarchal rulings as shari’a, as ‘God’s Law’, as the authentic ‘Islamic’ way of life, brought the classical fiqh books out of the closet, and unintentionally exposed them to critical scrutiny and public debate…. This opened a space for an internal critique of patriarchal readings of the shari’a that was unprecedented in Muslim history” (2010, 36). She continues her critique by referring to the lack of gender-based research in the framework of tradition. As she puts it well, “scholars who work within an Islamic framework are often gender-blind, being largely unaware of the importance of gender as a category of thought and analysis and often opposed to both feminism, which they understand as arguing for women’s
dominance over men, and human rights, which they see as alien to Islamic tradition” (Mir-Hosseini 2010, 22). Similarly, Fatima Mernissi (1991) and Leila Ahmad (1986, 1992) show how the juristic rulings of veiling, gender segregation, as well as the engagement of women in political affairs were manipulated and developed years after the Prophet Mohammad by the Caliphs and later by male jurists of the Arab patriarchal society to reduce the presence and role of women in the Arab society. Islamic jurisprudence has always tended to claim to be united with the Tradition of Mohammad and the Qur’anic teachings. Muslim jurists have intentionally given the classical jurisprudence a divine weight.

The second of the traits that Feirahi identifies is the emphasis of the traditional approach on a “dependent essence of human being”. The essence of humankind in Islamic doctrine, as Burhan Ghalioun argues, is dependence on God; thus, human beings need God’s guidance and intellect, as they lack sufficient mental capacities to understand God’s words on their own. Proposed by traditional Islamic views, such an understanding of the capabilities of human beings is largely under the influence of this observation regarding the nature of humanity. This viewpoint observes the essence of an individual to be a self-inclusive one and does not recognize human reasoning as an independent and unconditional cognitive tool (Feirahi 2012). As this approach undermines the capacity of human beings to study and understand the religion and the human reasoning cannot be a critical asset, this view lacks critical orientation.

It seems from the foregoing that both major frameworks, namely orientalism and traditionalism, have ideological70 understandings of Islam, although they are nourished from two

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70 Althusser’s thought on ideology is of use here. He asserts, “An ideology is a system with its own logic and rigour of representations (images, myths, ideas or concepts, depending on the case) endowed with a historical existence and role within a given society.” (Althusser 1969, 231). As Althusser maintains,
different foundations and principles and they result in different conclusions. They do, however, share similarities as they both are ideological. On the one hand, the traditionalist view is ahistorical and past-oriented. The Orientalist view, on the other hand, belongs to a linear understanding of history and observes history as a contiguous and monolithic reality with a focus on the future-oriented western experience of modernity. Neither of these approaches, I would suggest, considers epistemological shifts nor reflects historical breaks and gaps in Islamic history. As Foucault argues, historians have always removed a discontinuity principle from historical studies by reorganizing and reordering scattered events as continuous and related ones. He demonstrates that his historical methodology is based on this discontinuity or strict “periodization” of history by which one should understand each historical period uniquely. For instance, one is not permitted to comprehend what Foucault calls the classical age according to modern criteria, as classical criteria specifically were formed within their own discourse. Thus, these two ages are not related as continuous sequences of history (2002a, 8).

Although Foucault never wrote within the scope of feminist studies, the concepts that he developed have been used by feminists all over the world. Someone might object that I utilize a western thinker like Foucault to examine a Middle Eastern context like Iranian Shi’ism. I

ideology is not a discourse that a person accepts consciously and with critical reaction. Ideology includes discourses, images, and ideas in the environment in which we are born and that make us in a practical sense (Althusser 1969). According to the Dictionary of the Social Sciences, “The usage [of the term ideology] adopted by Marx and Engels is in the main governed by their concern with ‘false consciousness’. They view ideology as forms of false consciousness, i.e. as a system of distorted and misleading ideas based upon illustrations-as constructed with a scientific theory or view. Thus Marx writes that ideology is consciousness of reality wherein ‘men and their circumstances appear upside down as in a camera obscura…’ (K. Marx 7 F. Angels, The German Ideology, pts. I and III, ed. By R. Pascal, NY: International Publisher, 1939, p. 14). Such systems may be the rules which govern or are built into e.g. moral behavior, the work of a church, or a political or legal structure. They may also be belief systems which buttress such assessments or statements and, as Marxists would put it, ‘superstructures’ i.e. class-determined or class-regulated ‘mental’ phenomena such as language or morals” (Gould and Kolb 1964, 316).
acknowledge that Foucault’s findings and analysis are limited to French society of the Victorian era (what he calls the “classical era”), and I do not intend to generalize and apply his theory to understand Iranian Shi’a doctrines. Instead, for purposes of understanding the social effects of Shi’a doctrines in modern Iran, I employ the concepts and terms, which he redeveloped in interesting new ways in the social sciences, of discourse, power, discipline, regulation, and their mechanisms. To put it differently, his analysis and findings originated in the French society in which he lived. These theories and findings may or may not be generalizable, but I suggest that they are, at the least, transferable to assist scholars in reading the Islamic texts and certainly appropriate in the case I am examining. While unpacking a Foucauldian understanding of discipline, surveillance, discourse, and power, it becomes clear that the evidence that I discussed in my previous chapter can be read through Foucault’s lenses.

Studying Shi’a jurisprudence as a discourse and in a critical discursive system enables me to comprehend this form of Islamic tradition scientifically rather than ideologically. Discursive studies facilitate a researcher to study how Shi’a juristic knowledge has formed and been practiced, and how it has created a powerful discourse that exercises comprehensive regulations on women’s bodies and their sexualities. Discursive studies help me understand how Shi’a jurisprudence defines and represents certain feminine bodies and sexualities for Iranian society. How are these bodies imagined, regulated, and disciplined within this discourse? How does this discourse condemn, exclude, convict, and denounce the players in the discourse? Finally, and importantly, what kinds of punishments are determined for the trespassers of the rules laid out by this discourse? In this framework, I observe Shi’a jurisprudence as an apparatus of political power that constructs docile bodies.
The Discourse Analysis Approach

It is not an exaggeration to assert that few thinkers have affected contemporary feminist writings on the concepts of the body and power to the extent that Michel Foucault has. The critical orientation of Foucault’s perspective offers great advantages for feminist scholars. Foucauldian feminists build on Foucault’s rebuff of concepts from the enlightenment, going beyond binaries of rationality-irrationality, or mind-body to criticize the dual-opposition logic represented in these binaries (Vafaeikia 2011).

Foucault’s books and observations have inscribed key concepts into the lexicon of the social thought of the last half of the 20th century, and these continue today. Three noteworthy pairs of terms emerge from Foucault’s argument concerning the body, which are important for any discussion of the feminine body. They are: discipline, surveillance, and bio-power.

The first Foucauldian term that informs my argument is discipline. From a Foucauldian perspective, discipline is a concrete form of power that can be regarded as an instrument to control bodies. It trains bodies so that their activities and gestures provide optimum efficiency. Discipline, this concrete form of power, “disperse[s], mark[s], and fix[es] the population” (Rail and Harvey 1995, 166). Here, setting norms for bodies (normalization) is all that matters.

To explain the two issues that arise from this statement, Foucault indicates how bodies are targeted in a taming manner in the modern age. Foucault begins his book, Discipline and Punish: the Birth of the Prison (1995), with the horrifying story of the public torture and execution of Demine in March, 1757. He first depicts the suffering of Demine to analyze how
bodies were tortured in the classical age. A few pages later, he moves to a point 80 years after the public execution of Demine and describes Leon Faucher’s rules for the House of young prisoners in Paris, in which there was no execution, confession, torture, or physical harassment in the everyday schedule of the prisoners. Prisoners were not persecuted by the authorities, as they were not supposed to be removed or eliminated physically. They were instead sent to the prison to be controlled in order to be changed and tamed. Foucault claims that the advent of the guillotine, in March 1792, was related to this transmission, as the guillotine took the lives of its victims “almost without touching” their bodies (1995, 13).

What is the bottom line of this change? Foucault maintains:

Beneath the humanization of the penalties, what one finds are all those rules that authorize, or rather demand, leniency, as a calculated economy of the power to punish. But they also provoke a shift in the point of application of this power: it is no longer the body, with the ritual play of excessive pains, spectacular brandings in the ritual of the public execution: it is the mind or rather a play of representations and signs circulating discreetly but necessarily and evidently in the minds of all. It is no longer the body, but the soul, said Mably. And we see very clearly what he meant by this term: the correlative of a technique of power (Foucault 1995, 101).

Foucault identifies this change, namely the procedures of forming souls/minds through bodies in the modern period. Subjectification of souls is the ultimate goal of techniques of power. To achieve this goal, various techniques of power are practiced on and through bodies. This is the reason why criminals are no longer sentenced to brutal tortures, but authorities keep them in prisons to change them by using various techniques, which Foucault categorizes in his \textit{Discipline and Punishment: the Birth of the Prison}. The phenomenon of prison is of great

\footnote{This is Foucault’s designation of the period, which is roughly the seventeenth and eighteenth centuries and is usually called the Age of Reason or Enlightenment.}

\footnote{Foucault discusses techniques such as: the art of distribution, the control of activity, the composition of forces, and hierarchical observation (Foucault 1995).}
significance for Foucault, as it deciphers the essence of modern power, even while these techniques do not only exist in prisons. Society in itself is a prison or panopticon, according to Foucault. He identifies the hierarchy of power in prison with institutions such as schools, factories, hospitals, and armies. The power techniques for forming prisoners are found everywhere in the panoptic societies of the modern age, as the whole population is targeted to become subjected, controlled, and guided.

I have argued in this thesis that Shi’a jurisprudential texts as a form of discourse tend to discipline and regulate the feminine body. Such regulations of the body have an extremely wide domain, from birth to death and personal life to social life: how to dress and cover the body, with whom, when, and where sexual relations can occur. The regulations also control what kinds of precepts need to be practiced before, while and after sex; and what the manners and precepts regarding the dead body are. The feminine body imagined and represented in juristic texts in general, and resalah in particular, is what Foucault names “the docile body”, disciplined by religious percepts.

The second concept Foucault elaborates is surveillance, which he explicates through the phenomenon of panopticism. In Discipline and Punishment, he points out that in feudal societies under monarchic power, impressive public punishments could be a method for preventing crime. However, such techniques need not be applied in modern society, where an internalized disciplinary power that depends on a systematic surveillance is used in such a way that each individual becomes his or her own overseer. Describing this disciplinary power, Foucault adopts Bentham’s panoptic plan, with a central guard tower that provides a round (360°) field of vision, which is a way of describing the power relations of everyday life in modern societies (Chaput 2009). As a metaphor for a society, panopticism illustrates a dominant social control by means of
surveillance and self-policing. Foucault’s explanation of the prison accounts for how bodies are regulated and subjugated into obedience through constant surveillance. Why does the panopticon gain such important weight in Foucault’s argument and what does Foucault want to introduce to us by using the idea of the panopticon?

As Foucault argues, throughout history the powers have always dominated over bodies to produce docile bodies, but unprecedented surveillance was practiced on bodies between the 17th and 18th centuries. This surveillance was “wholesale, total, unlimited, massive, non-analytical and constant” (1995, 137). He continues by exploring the importance of the concept of “details” during that period. Traditionally, Christian theology has paid much attention to details. In the sight of God, all details are monitored and of great importance. Jean Baptiste de La Salle, in one of the most significant Christian hymns from this period, praised “little things” and their significance for the eternal salvation of the soul. Indeed, our salvation depends on details. Soon after, “the smallest fragment of life and of the body will soon provide, in the school, the barracks, the hospital and the workshop, a laicized content, an economic or technical rationality for this mystical calculus of the infinitesimal and the infinite” (1995, 140). Foucault argues that modern man was born from the political awareness of such observation of details. One can understand why Kafka’s mental world was so influential and inspiring for the French social scientist. Kafka (1883) created strange characters that are observed and made visible by the insightfulness of power, but they are not able to observe the observers. In Kafka’s *The Trial*, for example, details of Joseph K’s73 life are observed, as his daily affairs are supposed to be under the most acute observation. Foucault’s aim is to give a philosophizing account of Kafka’s world,

73 The protagonist of Kafka’s *The Trial*
as both show how details of our lives are monitored by the panopticon in order to be controlled, guided, and formed by the powers.

The panopticon exemplifies for Foucault the whole structure of modern power, which has the primary function of controlling and monitoring. This structure is visible everywhere today. In metropolises such as London, New York or Tehran, Bentham’s panoptic idea is widely performed and applied by means of cameras and CCTVs installed on every street corner, monitoring the daily behavior of citizens in order to punish, control, and form “good citizens” through constant surveillance.

As discussed in the previous chapter, the feminine body is under severe control and surveillance in the Islamic juristic texts. This surveillance is the result of detailed disciplines, which are created to punish the wrongdoers. The texts are the ideological and theological basis of the penal law in Iran. As a result, the comprehensive rules and regulations of Iran’s regime are the realization of the juristic texts. The feminine bodies are therefore monitored, politicized, and criminalized to create the Muslim Umma (community) through persistent surveillance. As I have discussed, one of the concrete manifestations of the judicial surveillance is a set of ta’zir laws. What ta’zir laws do is monitor and restrict the ways Iranian women dress, appear, and stroll in the streets. These women are always being watched by the power, as they are seen to be the center of chaos that can threaten the social order. This surveillance is not limited to the conduct of women in the society. It includes and influences the relationships of people in their bedrooms. The juristic texts also monitor and control the ways partners practice various forms of birth control. The ways in which women’s bodies and their sexualities are monitored, politicized, and criminalized in these juristic texts exhibit what Foucault calls constant surveillance on bodies, controlled by religious rulings.
Finally, and contrary to most theories of power, with their emphasis on the domination of one group by another, Foucault uses “bio-power” to refer to the ways in which power represents itself in everyday life. He proposes the term “bio-power” to indicate the dominant system of social control in modern Western society. In his lectures on *Security, territory, population* (2007), he proposes a definition of bio-power:

By this [bio-power] I mean a number of phenomena that seem to me to be quite significant, namely, the set of mechanisms through which the basic biological features of the human species become the object of a political strategy, of a general strategy of power, or, in other words, how, starting from the eighteenth century, modern western societies took on board the fundamental biological fact that human beings are species. This is roughly what I have called bio-power (2007, 16).

What does Foucault mean by transforming human beings into a species in modern societies? He argues that the biological features of citizens, in the bio-political manner of governing, are targeted to be controlled, guided, and changed. As an example, sexuality has been one of the controversial issues for modern societies. Legally speaking, the modern powers have always defined straight sexual identities and passed laws that prescribe punishments for violators of accepted identities. Lesbians and gays may face a capital penalty in Iran, for instance. Pederasts have normally been sentenced with heavy punishments almost all over the world. These examples indicate that our biological features have been politicized in modern powers.  

This is the reason that Foucault claims that in the modern age, human being is transformed into species beings. Human being in modern society is integrated “within biology” (2007, 105). Foucault traces the hidden structure of bio-power in modern societies in all of his books. He wants to show that our bodies have become the ultimate challenge of modern societies. Bio-

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74 Although the origins of such discussions are in early Christianity, sexuality in the modern era, as Foucault argues, has found a central place around which various scientific, medical, and political discourses have been formed.
power is a power that dominates over living being as species. He claims that in the eighteenth century, European societies preferred to keep criminals alive and put them in jail instead of torturing or executing them. The old sovereigns of the classical age had the power of life or death over people: they could decide to kill or let one live. With the emergence of bio-power, the characteristics of classical power changed and “controlling life in general” or “the power to guarantee life” became the priority of modern European and other western societies (Foucault 2003, 253). Population has become one of the most significant factors for a prosperous economy. Such prosperity requires a regime to control, guide, tame, and manage the population for schools, factories, hospitals, and other working places. This is the reason why modern societies have become reluctant to physically eliminate people. They prefer instead to stabilize their populations by managing lives. Bio-power was developed to fulfill this need, as it provides docile bodies to be dispersed into the different positions of modern societies.

Bio-power is a characteristic that is spread throughout a society, inherent in social relations, circulated among people, and rooted in a network of practices and institutions. Present in all of the micro levels of everyday life, bio-power, as coined by Foucault, is now used by social scientists to point to the ways states intervene in and manage the life of their citizens. “Bio-power” is what operates on our bodies to regulate them through our self-disciplinary practices, by means of which we subjugate ourselves. Foucault contends that the impact of the controlling gaze regulates and disciplines our bodies. “The institutional disciplining creates bodies that are habituated to external regulation, working to discipline the body, optimize its capabilities, extort its forces, increase its usefulness and docility, integrate it into systems of efficient and economic controls" (Pylypa 1998, 22). Consequently, it produces the kinds of bodies that specific societies demand.
Thank to the vast propaganda and numerous published editions of the *resalahs* in Iran, there are volumes of the *resalahs* and juristic books of Shi’a ulamas in almost every Iranian household. They have been read through succeeding generations by Iranian women who are concerned with their daily activities regarding everything from their sexual relations, to purity of their bodies, to the permissible ways of birth control. Foucault shows that bio-power represses but is simultaneously productive. He suggests that we understand bio-power not as a monolithic force but as a fluid and dispersive reality. In the juristic texts, the nature of the marriage contract, the rulings of testimony, inheritance, *zina*, and *ta’zir* laws are all based on the inferiority of women to men. In some rulings, this preference is implicit, but in other cases, such as the marriage contract, it provokes discrimination through the explicit power relations embedded in the rulings.

Foucault argues that wherever there is power, there is resistance as well, and that this resistance is not outside but inside the specific power form. There is a continual interaction between power and resistance. Power manifests itself, and resistance responds to it by re-manifesting itself in a new way. Let us bear in mind that, although the executive power of the rulings is high in Iran, Iranian woman have not passively accepted the rulings in total. Instead, they have internalized the rulings depending on their religious, economic, social, and political backgrounds.

Since power is important, as it is productive and exercised within discourse, it creates and rules individuals. In Iran, the discourse of jurisprudence is powerful, because it is productive. In the second chapter, I briefly discussed the financial and political privileges that make the discourse of jurisprudence productive and influential in Iranian society. I observe that Shi’a jurisprudence is an apparatus of political power that constructs docile bodies. As long as power
exists, it distorts the body in certain ways and disciplines subjects in and into particular ways. Shi’a jurisprudence imposes rules for women’s thoughts and behavior both consciously and unconsciously through the power of the discourse, as I have shown in my examination of that jurisprudence.

**Statements and Discourse**

Along with the three notions developed around the concept of body and their relations to my argument, there are two further principal concepts on which to elaborate, namely documents and discourse in Foucauldian terms. These two are of great use for understanding the place of the feminine body in Shi’a texts. I will explicate these two concepts within the framework of discourse analysis, drawing on the theories of Foucault (2002a), Fairclough (2004), and Wodak (1989).

It is vital to elaborate on the new method Foucault proposes for understanding “documents”, whereby he changed our understanding of what they are. How can one understand historical documents? How is it possible to forge a common logic among non-identical or unrelated documents? Contemporary sociology encountered change by way of such questions that Foucault raised. Even though Foucault’s new framework is informed by a western view and tradition, it may be usefully consulted for my examination of the Islamic juristic texts and judicial determinations, just as I have already shown this to be the case for his prior framework.

In various traditions of scholarship, including the western and Islamic traditions, historical documents have always been considered one of the best measures for representing
historical events. The representative characteristics of documents have at all times assisted historians to build their narrative stories. Historians have narrated history for the next generations by gathering various documents, which are mostly investigated for their historical veracity, and they have frequently asked whether these documents purely, frankly, and truly can represent the real image of our ancestors. Against these common procedures, Foucault’s proposed methodology is conceived as a sign of the new way of understanding documents.

Documents have been used, questioned, and have given rise to questions; scholars have asked not only what these documents meant, but also whether they were telling the truth, and by what right they could claim to be doing so, whether they were sincere or deliberately misleading, well informed or ignorant, authentic or tampered with. But each of these questions, and all this critical concern, pointed to one and the same end: the reconstitution, on the basis of what the documents say, and sometimes merely hint at, of the past from which they emanate and which has now disappeared far behind them; the document was always treated as the language of a voice since reduced to silence, its fragile, but possibly decipherable trace. Now, through a mutation that is not of very recent origin, but which has still not come to an end, history has altered its position in relation to the document: it has taken as its primary task, not the interpretation of the document, nor the attempt to decide whether it is telling the truth or what is its expressive value, but to work on it from within and to develop it (2002a, 6) (Emphasis is mine).

In this new method for investigation of documents, one no longer should be concerned about the “representative characteristic” of historical documents; as for archaeologists, the “reconstitution” is no longer a matter of concern. Regardless of this characteristic, one should consider understanding the documents from “within” and studying how they “develop”. What does Foucault mean by understanding the documents from “within”?

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75 The western colonial and orientalist view assumes that Middle Eastern and Eastern cultures do not have historical archives or that their historical documents are not representative and that an anthropologist must go among the people or “tribes” for interviews or participant observation in order to be able to conduct research “on them”, as they do not have written, established histories. I refer this kind of view to the well-known Tarikh-e Beyhaghi (Beyhaghi History) from the 11th century AD and Tarikh Tabari (Tabari History or History of the Prophets and Kings) in 40 volumes from 915 AD, also hundreds volume of juristic books from the 7th, 8th centuries as well as the contemporary ones that I am mostly using, to show the serious established written history in the East.
To address this question, one must study the new meaning of objects in *The Archaeology of Knowledge* (2002a). Foucault reduces the importance of novelizing narratives, or the representative characteristic of history, by claiming that objects are formed within discourses and that they have nothing to do with external realities that we usually understand by objects. Objects are formed within discourses by means of documents or social events. Thus, they constitute the internal logic of discourses. Here, a new Foucault comes into the picture: in his first works, there is no sign of such a distinction between representation of objects outside of the discourses and formation of objects “within” the discourses. It may be said that in *The Order of Things* (2002b), one easily finds the opposite argument, as Foucault persistently speaks of the different ways of representing external “things” or objects by the discourses. But in *The Archaeology of Knowledge*, the existence of external objects, realities or “things” is of no importance for Foucault.

One cannot speak of anything at any time; it is not easy to say something new; it is not enough for us to open our eyes, to pay attention, or to be aware, for new objects suddenly to light up and emerge out of the ground. But this difficulty is not only a negative one; it must not be attached to some obstacle whose power appears to be, exclusively, to blind, to hinder, to prevent discovery, to conceal the purity of the evidence or the dumb obstinacy of the things themselves; *the object does not await in limbo the order that will free it and enable it to become embodied in a visible and prolix objectivity; it does not pre-exist itself, held back by some obstacle at the first edges of light. It exists under the positive conditions of a complex group of relations* (2002a, 35) (Emphasis is mine).

The “complex group of relations”, in which an object “does not pre-exist itself” means that these objects are not waiting to be discovered by the historians. They do not exist independently, but are created by discourses. Foucault implies that one cannot speak of the “representative character” of documents. Thus, the meaning of “working within” comes out of its dark zone. Such ideas demonstrate Foucault’s change, as he is reluctant to speak of “the real” objects anymore. He, instead, prefers to illuminate how objects are formed within specific
conditions of discourses and their internal relations. This formation has nothing to do with the reality of objects. No one is able to go beyond the limitation of discourses and realistically speak of the external world. To illustrate this claim, Foucault brings sexuality to our attention. In the first volume of his *History of Sexuality: An Introduction* (1978), he writes about “Imaginary sex”.

By creating the imaginary element that is “sex”, the deployment of sexuality established one of its most essential internal operating principles: the desire for sex— the desire to have it, to have access to it, to discover it, to liberate it, to articulate it in discourse, to formulate it in truth. It constituted “sex” itself as something desirable (1978, 156).

Foucault asserts that “sex” is totally imaginary and is formed within a discourse, as any discursive object exists only within the discourse and lacks any representation of the real world. Modern societies want to recognize any phenomena according to sexual issues. This is what Foucault addresses as “pansexualism”, or “reproaching everything sexually” (1978, 158). He argues that sex is only the discursive object formed within discourses and that it has no existence apart from such discursive disclosure. He maintains that no matter how much has been said and written regarding sex, it is still imaginary and “unreal” and one can live as if it did not exist at all. The discourse of jurisprudence and its internal relations that we observed in the previous chapter present a specific picture of the feminine body and of women’s sexuality, which is imaginary in the way that Foucault argues all discursive objects are imaginary. Shi’a juristic discourse observes women as inferior beings, as their bodies and their mental faculties are imagined as weaker and inferior. This imaginary, false, and fictitious picture of women resulted

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76 Foucault is not an epistemologist to question whether or not the real word exists. He shows how the body is ideologically and discursively produced, no matter what the alternative or the real world is. In fact, it is not in his line of thought to discuss what the real body is or if there is a real body or not. He is not a skeptic who does not believe in a real world. I am in favour of the Agambenian reading of Foucault which emphasizes an independent political subject rather than a dependent and passive discursive subject, which is a common reading of Foucault’s thought (*Profanations* 2007).
in women being less engaged in social and political activities. Such an imaginary picture also caused women to be granted a lesser share of inheritance than men, as the juristic discourse believes that women, because of their deficiencies, cannot have control of their inheritance and any financial sources as effectively as men can.

To understand how discursive objects are principally formed and developed, one is dependent on what Foucault calls “statements”, which, according to him, are “the atom[s] of discourse[s]”. He metaphorically describes a statement to be “a seed that appears on the surface of a tissue of which it is the constituent element” (2002a, 63). A tissue is composed of numerous but similar seeds.

Any discursive analysis has to find such basic elements (statements) and examine the whole discourse based on them. These basic statements enable us to understand what any typical discourse is saying. Statements are frequently employed in discourses with different guises and appearances, but with similar content. Statements are the skeletons of any discourse. Thus, finding discursive statements is vital and necessary for any investigation inspired by Foucauldian methodology and discourse analysis.

In the previous chapter, we saw revealed in the written texts —the documents— of the resalahs and some juristic texts, the hidden lines of the statements and assumptions regarding the feminine body and its sexuality that have formed a set of disciplines on the body. In the discussions and the specific chapters of the juristic books and documents that I followed, I identified some statements in the juristic texts through which the feminine body is perceived. ‘Criminalized body’, ‘reproductive body’, ‘lusty body’, and ‘weak body’ are the skeletons of the
discourse of Shi’a jurisprudence. These statements are the nucleuses of this discourse and all the rulings concerning the female body are formed based on them.

Regarding the concept of discourse, Gillian Rose (2001) argues that the idea of discourse is central, not only to Foucault’s theoretical arguments, but also to his methodology.

Discourse has a quite specific meaning. It refers to groups of statements which structure the way a thing is thought, and the way we act based on that thinking. Discourse is a particular knowledge about the world, which shapes how the world is understood and how things are done in it. Lynda Nead (1988, 4) defines discourse as “a particular form of language with its own rules and conventions and the institutions within which the discourse is produced and circulated (2001, 138).

Similarly, regarding the concept of discourse, Norman Fairclough asserts that discourses are “ways of representing aspects of the world — the processes, relations, and structures of the material world, the ‘mental world’ of thoughts, feelings, beliefs, and so forth, and the social world” (2004, 125). One aspect of the world might be represented differently in different discourses. Different discourses are connected to the different relations that people have with the world. It is also related to the social and personal identities of people (2004, 125).

Fairclough is one of the contemporary founders of Critical Discourse Analysis, which places a specific focus on language and texts and linguistic field. As he maintains, the ways of the dispersion of statements is called discourse. Applying such statements in different situations forms discourses. These statements are also what Fairclough calls “assumptions” in his *Analysing Discourse: Textual Analysis for Social Research* (2004). Inspired by the Foucauldian framework, Fairclough distinguishes between intertextuality and assumptions in analyzing ‘texts’, which are comparable with ‘documents’ in Foucault’s wording. Intertextuality refers to external relations with and among texts: “analysis of the external relations of texts is analysis of their relations with other elements of social events and, more abstractly, social practices and
Each text or document is largely under the influence of external factors such as social, political, and economic forces. Fairclough uses intertextuality to point to these external influences. The other aspect of texts is “assumptions”, in Fairclough’s terminology. Assumptions are internal aspects of texts. He maintains, “As with intertextuality, assumptions connect one text to other texts, to the ‘world of texts’ as one might put it” (2004, 30). “The world of texts” is the relation between texts, which are common among texts. Or in the exact words of Fairclough, these assumptions are “assuming common ground” (2004, 31).

Foucault refers to “common ground among texts” as “statements”, which form texts or documents. Intertextual relations between texts are based on the basic assumptions, which constitute texts. The vital and crucial part of texts is these assumptions, as other aspects of the texts could not contradict these assumptions. Similarly, statements, in Foucault’s terminology, occupy such a position by which they could form discourses, so that one could understand a discourse according to the statements. This is a common characteristic of the structuralist movement in which the diversity and multiplicity within a given discourse are reduced to basic statements. Structuralist thinkers are interested in finding basic and essential structures, which are technically very simple and plain. Any discourse analysis should follow such a pattern to be able to understand every structure or discourse entirely.

There is a need to consider that discursive analysis does not necessarily negate the political orientation of discourses. As Karl Soring points out, there is no “pure”, or “unbiased” statement in language (1989, 95). Similarly, Edward Said argues,

Political orientation usually can be perceived via language. … it needs to be made clear about cultural discourse and exchange within a culture that what is commonly circulated by it is not “truth” but representation. It hardly needs to be demonstrated again that language itself is a highly organized and encoded system, which employs many devices
to express, indicate, exchange messages and information, represent, and so forth. In any instance of at least written language, there is no such thing as a delivered presence, but a re-presence, or a representation… And these representations rely upon intuition, traditions, conventions, agreed-upon codes of understanding for their effects, not upon a distant and amorphous orient (1979, 21-22).

Likewise, according to Wodak, the political aspect of language is its ideological structure. He believes that this structure “creates and propagates a secondary reality which one either has to believe in (totalitarian systems) or may believe in (democratic systems)” (1989, 140). Wodak does not recognize much difference between democratic and totalitarian systems through which people are persuaded differently. This ideological character of language manifests itself via the political desire to persuade others. Why do political institutions, groups, and administrations tend to convince people? The desire of persuasion is found in language, as human beings use language to communicate and convince each other. By using language, one could make other people persuaded or strictly formed. This is the ideological characteristic of language, which has been largely criticized by the structuralist thinkers. Using their methodology, therefore, requires considering language as an essentially political and ideological phenomenon and not a neutral one. Wodak argues that language within itself is a political and ideological phenomenon.

This argument is informative for my thesis, because the Iranian regime uses the religious and persuasive language of Shi’a jurisprudence to obtain its political legitimacy. Political manipulation of the religion is effected through the Shi’a teachings by the Iranian regime, which governs the so-called biggest Shi’a territory in the world. Shi’a jurisprudence works as one of the minor and hidden state power apparatuses of the Islamic republic of Iran to produce individuals

77 As the common readings of Foucault’s arguments are less political, I believe Wodak can expand for us the ideological and political meaning of discourse and language.
(in this case, women) with docile bodies in a specific ways, which serve its ideological doctrine and its aspirations.

By referring to “statements” and “discourse”, I would also like to stress that the political orientation of discourses is not completely neglected in Foucault’s observation. Considering his understanding of power and his specific term “bio-power”, he does not analyze the political sovereign or government as a means of exercising power on individuals. Rather, he observes the various hidden and dispersed power apparatuses, which aim to regulate individuals such as hospitals, schools, and military services. In his further writings, especially *The Birth of Prison* (1995), he demonstrates how mechanisms of power hold simultaneously the two aspects of subjectification and objectification of individuals. These two procedures of power seem to be two sides of one coin. Objectification refers to disciplining procedures in a society, which aim to train, regulate, and tame individuals by making them passive to absorb given trainings. Subjectification, on the other hand, addresses the process of training an individual in order to act as a so-called autonomous subject in ways for which she or he is already trained. One cannot be governed unless one authorizes to be governed or one cannot be objectified unless one becomes subjected.

My contention here is that without studying Shi’a jurisprudence as a discourse, one cannot comprehend the massively systematic discipline by which the Islamic Republic of Iran has managed to produce the feminine body ideologically in the contemporary history of Iran. Analysing the discourse of Shi’a jurisprudence requires investigation into historical, political and economic events, which have had impacts on its formation. It also necessarily involves the analysis of documents and texts. Written documents are not the only source of texts or discourses, but their rules are of great importance. Adopting this aspect of Foucault’s method, I
have shown how the juristic texts, as written texts or documents, have developed specific, formidable forms of controlling, managing, manipulating, and governing the female body. There are numerous external factors, specifically political and economic, which have played a role in the formation and development of this discourse and knowledge, but my intention has been to emphasize the ways in which these texts work; their assumptions and the basic statements that objectify women’s bodies.

I have seen and studied the Shi’a juristic texts as a powerful discourse in Iranian society. Shi’a jurisprudence is a “mental world of thoughts”, as Fairclough asserts. It consists of groups of statements, which structure the way the feminine body is thought. The discourse of Iranian Shi’a jurisprudence is a particular knowledge about the world with a particular perception of the feminine body. It is a productive and powerful discourse in Iranian society. It therefore shapes how the world is understood and how everybody has to think of things. As it is a discourse, it has its specific forms of language to condemn, rebuke, exclude, and punish the human subjects, as I have discussed.

I have argued that the discourse of Shi’a jurisprudence tries to produce human subjects, and especially to produce what is considered an ideal woman in the eyes of the religious books. Shi’a jurisprudence tends to discipline subjects in and into particular ways and exercises specific body politics, which include orders concerning the female body in sexual intercourse, marriage, and veiling. Each of these orders presumes a particular view of the female body and her sexuality. In Shi’a jurisprudential discourse, the female body has been defined, disciplined, regulated, and veiled. I argue that in this discourse, the feminine body is always covered with notions of mystery, shame, discredit, sin, evil, weakness, taboo, and uncleanness. These texts are inflexible male-defined and male-dominated texts. This discourse regards women as subservient
to men and represents women’s bodies in a way that is inferior, weak, low capacity, whimsical, lusty, and at men’s service. They also produce a body that is defective, supposed to deal with shame, pious, covered, and hesitant. Such representative statements concerning the feminine body have an impact on the social construction of gender roles, in which women cannot obtain social and political positions in their society.
Chapter Five: Conclusions

In this thesis, I have discussed the systematic and institutionalized regulation of the female body and sexuality in Shi’a jurisprudence. Conducting such a study is crucial, as these texts are the sources of knowledge and policy making for Iranian authorities concerning women. The laws of Iran are written based on such knowledge and understanding of women. Although the inferior position of women in Iranian society will not improve merely through reforming and changing the misogynist laws, structural changes in the laws can be the preconditions of further steps in favor of women and their empowerment. I have also pointed to Muslim feminists whose main claim is that these texts are not based on the Divine law, but are male-defined and male-dominated voices of Muslim jurists during the centuries after the departure of the Prophet. These rulings and laws have emerged in various Muslim countries with diverse, but mostly patriarchal cultural values. It is important to study juristic texts, especially in the context of Iranian society, where the resalahas are on a shelf in almost every household, even if they are not closely followed.

Hadd punishments as well as ta’zir; hijab and dress codes laws, regulations concerning reproduction and sexual intercourse, rulings regarding inheritance, witness, and leadership that I have discussed, should all be understood comprehensively as parts of a complex discourse that aim to regulate feminine sexuality and female bodies. I have been looking in the juristic texts that I have studied for an answer to my question about what the underlying principles concerning the feminine body and its sexuality are in these texts that serve to define Iranian women for the Iranian authorities. As I have discussed, the underlying principles and constructs that I have, inspired by Michel Foucault, narrowed into basic statements of the discourse of Shi’a
jurisprudence, are statements that include the criminalized body, the lusty body, the reproductive body, and the weak body and mental faculty.

It became evident in various discussions in my thesis that there are power relations among women and men in favor of men in the juristic texts. The consequences of such inequality and non-egalitarian man-made juristic rulings are explicitly evident in Iranian society. My attempt has been to attribute most, but not all such accounts, not to the Divine law, but specifically to Shi’a jurisprudence, which was formed years after the revelation of the Qur’an and the time of the Prophet. In these juristic rulings, unequal power relations are omnipresent in interpersonal relationships between men and women, not only in areas such as inheritance and rules of testimony, but also in areas such as marriage laws. Such power relations are evident in the concept of possession and control in the marriage contract. The characteristic of ownership is so far-reaching that Abdolwahab Bouhdiba interestingly refers to a hadith in regard to women, that they must not refuse their husbands when the latter have sexual needs. He asserts, “According to a Tradition of the Prophet, Mohammad cursed the maswwifa and mughallisa woman. The first is the woman who, when invited by her husband to make love, always replies saufa (not just yet). The second is the woman who falsely claims to be having her period” (1985, 89). Another hadith that shows this subordinate position of women is about a woman who asked the Prophet concerning the rights of the husband and the Prophet replied: “A woman must never refuse him, even on the topmost edge of a burning oven” (1985, 89).

These meticulous and intense Shi’s juristic rulings, which are written to regulate and subjugate, are a machine that is supposed to produce the truth in the absence of any input from women. The feminine body is the site of forgetfulness in the Shi’a teachings and the voice of the woman is kept silent. Sadly, although juristic laws are mostly concerned with the female body,
the Ayatollahs and jurists who write all the laws are men. These laws deal with the body and 
sexuality of women, but women are not supposed to share their opinions or perspectives in the 
formation of the laws. As Fateme Sadeqi asserts, in this juristic system “woman and womanhood 
is the Other and an object, based on which a kind of sexual politics and restrictions are formed” 
(2013, 356).

I did not plan to exceed the common length and time table for a Master’s thesis, but I 
could have continued this line of inquiry, finding other gender constructs in the texts to show, for 
instance, the juristic image of the feminine body as a “dirty body”, which is prevalent in the 
chapters on purity, menstruation, and praying. In terms of future studies in this field, I feel a need 
to investigate the discursive construction of gender in various political eras in Iran’s history, 
including the Safavid era, the Qajar era, etc., based on the juristic discourse unique to each. In 
addition, the paradigm shifts and turning points in Shi’a rulings regarding the precepts for the 
feminine body and the influence of other discourses such as medical, technological, and human 
rights on Shi’a juristic discourse, is an important inquiry in the field of Middle Eastern and 
Islamic Studies. There is little scholarship in this area. Mohammad Tavakoli Tarqi’s article 
(2012) concerning the epistemological revolution in medicine, named the Pasteurization 
revolution, in the late 19th century in Iran, and the consequent conflicts regarding the juristic 
definition of pure water, is one of the few examples.

Another kind of research that is missing in current scholarship in the field of Islamic 
Studies and Middle Eastern Studies is a deep social-psychological examination of the influence 
and domination of the ideological juristic constructs that I have discussed on the unconscious of 
Iranian women.
As Nawal el-Saadawi interestingly describes,

The education that a female child receives in Arab society is a series of continued warnings about things that are supposed to be harmful, forbidden, shameful, or outlawed by religion. The child therefore is trained to suppress her own desires, to empty herself of authentic, original wants and wishes linked to her own self, and to fill the vacuum that results with desires of others. Education of female children is therefore transformed into a slow process of annihilation, a gradual throttling of her personality and mind, leaving intact only the outside shell, the body, a lifeless mould of muscle and bone and blood that moves like a wound up rubber doll (el-Saadawi 2007, 21-22).

In the same line, David Ghanim opens a discussion on gender alienation. He explains how the cultural, including the religious values of the Middle East, affects the social construction of gender roles, which is the basis for gender alienation. He asserts, “gender alienation profoundly affects the development of the inner self, the perception of the other, and the relationship of the self and the other. Gender alienation is a process that degrades and devalues the self, distorts the other, and affects the relationship between the self and the other in a damaging, coercive way” (Ghanim 2009, 69). He emphasizes that alienation of the feminine body is an indication of gender alienation, arguing that “a person becomes an object for herself when she experiences her body as alien to her subjectivity, rather than as the direct expression of her subjectivity” (Ghanim 2009, 74).

Since having found myself studying the Islamic traditions and becoming interested in Middle Eastern studies, I have been curious how other fellows/colleagues of mine are working in this area here in North America. It was through Professor Omid Safi, former faculty member of Islamic Studies at UNC-Chapel Hill and current faculty member at Duke University that I became acquainted with several professors and their students in North America with similar interests. It was at that point that I found how my understanding and experience are different in their very basics from those of fellow Muslim women studying in North America. I have hardly
ever experienced the compassionate Islam that they present and study. My experience of Islam has been closely connected to political power. Thus, it has been full of fear and suppression. In my embodied experience, power deforms the body in various forms and shapes. It also represents a distortive image of the body. As a woman born and raised in Iran, I have not been able to connect much with the narrative such people present from Islam. I have visited their weblogs or Facebook profiles, seen their photos of themselves in bikinis at the beach, and read their love stories about themselves and their boyfriends, which are posted publicly. I see their photos and posts with their moods of Middle Eastern origins, happily eating kebab with saffron rice, smoking shisha, taking photos of glamorous Islamic architecture, and listening to the music of Umm Kulthum (1904-1975), the female Arab singer of Egypt. “What different encounters we have had with Islam, as if we are from two different worlds,” I say to myself. My first encounters with Canada were filled with tensions concerning my body. Although we Iranian women have a private life in Iran among our families, friends, and relatives, which is more egalitarian, diverse and liberated than our public life in the presence of the state, unleashing my hair without a hijab in public felt good outside of Iran, where there is no surveillance to warn me to cover my hair. Summer time was a suffering and torment, as people dressed in light, summery, short, and revealing clothing. I had always felt a continuous resistance against it, which was full of pressures, conflicts, and anxieties. Those fellow students of Islamic Studies seem never to have experienced Islam as an institution, a repressive apparatus, and a disciplinary power that can cause lasting wounds to the body as well as the soul.

78 I must mention that I am not generalizing this type of perspective and scholars to the entire body of scholars that contributes to the field of Middle Eastern Studies and Islamic Studies in North America. Through and by this comparison, I want to show the different experiences that exist in confronting a phenomenon, Islam, as it is said not to be a unitary phenomenon. Islam is not one religion; indeed we have various historical Islams.
I believe, however, that the various experiences of women with Islam must be acknowledged, as they appear in other countries that have different political, social, and economic institutions. Putting the heavy weights of cultural dimensions aside, the distinction that I described above, I would suggest, can at least indicate that as long as the religion (here I am concerned with Islam) is involved in political power, women will be victims of severe oppression. Likewise, Fatima Mernissi argues that the construct of womanhood in orthodox Islam is realized as an outcome of collaboration between political purposes and ideological excuses (Mernissi 1987). We have learned from Foucault, Talal Asad (1933), and other Foucauldian thinkers in the sociology of religion that religions, regardless of the historical and geographical periods in which they have emerged, are formed by institutions of power and political resistances, based on hegemonic interests. Indeed, imagining a religion as merely a set of static epistemological statements that are transformed across times and places, is historically untenable.

As a final note, I would like to point out that Iranian women have not been passive in response to the Islamic regime’s misogynist, conservative, and patriarchal attitudes or to readings of Islam that the regime has followed in the past nearly four decades on various issues, including, but not merely limited to, restrictions on birth control, reducing the legal age of marriage for girls, polygamy of men, unequal inheritance rights, and unequal divorce rights. In the case of hijab, women demonstrate liberating resistances in their everyday life. This phenomenon has provided Iranian women with the power to manage and control their bodies in a skillful manner the way they want, using their bodies, clothes, and fashion as tools to support, protest, condemn, and resist. By such insistence and resistance, Iranian women have made a thorough execution of Islamic rulings impossible. Various socio-civic campaigns have been created by activists as well
as students, including the Campaign against Stoning, the Campaign against Mandatory Hijab, the Campaign for Abolishing the Death Penalty, and the Campaign of One Million Signatures for the Repeal of Discriminatory Laws. Several women activists were arrested or forced to leave the country because of their advocacy for these campaigns. The recent campaign called Stealthy Freedom of Women in Iran has caught international media attention. It has also led to the criticism of clergymen and conservatives in Iran.

Shahrnoush Parsipour (2012), an Iranian novelist in exile in California, was imprisoned several times in Iran because of her writings. Her book, *Women Without Men*, which is banned in Iran, is a mixture of surrealism and magic realism. She uses a metaphorical language to uncover complicated feminine narrations. She portrays a world in which there are barriers to the peaceful coexistence of the sexes. She writes about the values of a society in which virginity is closely connected with the purity and chastity of women. She narrates the story of Mahdokht, who challenges an anxiety concerning her sexuality and pregnancy. Mahdokht could not tolerate the unbearable world she was living in and decided to plant herself to grow as a tree whose seeds spread in the world.

In the chapter entitled *Mahdokht*, Parsipour writes,

Mahdokht had planted herself on the riverbank in the fall. She suffered as the clay around her ankles hardened. The freezing rainstorms of the season tore her clothes to

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79 For more information, the reader is encouraged to consult this link and other information on the well-known Iranian website, the Feminist School. (http://www.iranianfeministschool.com/english/spip.php?article342, accessed on July 19 2014).

80 For more information, see (http://www.theguardian.com/world/2014/may/12/iran-women-hijab-facebook-pictures-alinejad, accessed on July 19 2012)

shreds...She shivered incessantly until the winter frost froze her all over...With the first spring showers, a thaw set in and splintered the ice and she felt the tingling of sprouting buds on her limbs. Her toes resumed their growth as roots, and they penetrated deeper and deeper into the earth. She could hear them grow. She listened to the sound of the roots and watched the water in the river turn green. The fall arrived again, and with it came the cold. But she no longer suffered...She welcomed the spring and her heart filled with joy,...Now, as she started at the river, she no longer saw a continual stream, but a flux of liquid drops rushing in the riverbed helter-skelter in their numberless multitude. This exacerbated her pain. Towards the end of April the pressure within her reached explosive force. It burst out suddenly and violently. Although it was an explosion, it was not an instantaneous blowout, it was nuanced and in stages. It was as if her tissues were coming apart slowly and jarringly. In a perpetual transmutation Mahdokht was separating from herself, suffering excruciating, unbearable pain like birth contractions... It all came to a sudden end. The tree was now a mountain of seeds. A strong wind scattered from into the river. The seeds [Mahdokht] travelled with the water to all corners of the world (2012, 103-105).

The story that Parsipour narrated is an acknowledgment of how Iranian women use their imagination as a weapon to resist and threaten the patriarchal values of their societies, including the religious precepts that support them. These women constantly attempt to push the oppression back and speak out against the current repressions and empower their voice beyond all political rhetoric (Neshat 2004). Although the government uses all its resources, including military oppression and cultural supplies, to propagandize its sexual normative values with or without force through either punishments and court processes or cultural activities, Iranian women have tried to find their ways to dance over the rulings in several issues that I discussed, such as sexual relations before marriage, or requesting egalitarian and equal stipulations in their marriage contracts to secure their equal rights for various issues including child custody, inheritance, and divorce, as well as the right for the woman to leave the country without her husband’s permission, the right to get a job, and the right to choose her lodging. All such manipulations in the imposed governmental rulings and laws contribute to breaking the imaginary and fabricated picture of a woman in juristic teachings as a weaker and inferior person whose main task and concern should be her fertility.
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