

Fihi Attitude towards the Institution of Marriage: A Moral and Qur'ānic Critical Revision

*Seyed Rasoul Mousavi**

*Abolghasem Fanaei***

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Abstract

An inductive examination of fihi verdicts on the institution of marriage reveals the substantial influence of conventional (and partially religious) norms governing the institution of slavery and commercial practice. The extent of this influence is such that the sole justification for some of these verdicts is analogical reasoning comparing marriage to trading a female slave.

This article tries to: (1) demonstrate this influence using a comprehensive survey of fihi Verdicts on different aspects of marriage; (2) show that this approach is not morally justifiable; (3) illustrate that there is a huge gap between this and the Qur'ānic outlook on marriage; and (4) present a new interpretation of the relevant body of traditions (Sunnah) Concerning marriage showing that the popular fihi understanding is incorrect and that the Qur'ān and valid traditions do not endorse a mercantile, domineering and patriarchal attitude towards women.

In our concluding remarks, we briefly elaborate on different types of discourse found in the Qur'ān and Sunnah claiming that substantive discourses, such as moral and spiritual discourses, must be distinguished from accidental discourses, such as economic and master-slave discourses, and that we must interpret the latter in light of the former and not the other way around.

Keywords: Institution of Marriage; Institution of Slavery; Family Institution; Women's Rights; Marriage as an Economic Transaction.

* PhD Student in Jurisprudence and Fundamentals of Islamic Law, Semnan University, Semnan, Iran. (Corresponding Author).

Email: sr_mousavi@semnan.ac.ir

** Assistant Professor, Department of Philosophy, Mofid University, Qom, Iran.

Email: a.fanaei@mofidu.ac.ir



Bibliography

Books and Articles

- Al Zoḥayli, wahabaï (1985). *Al Fiqh Al Islāmi wa adellatoḥ*, 2nd ed, Damişq: Dār Al-fikr. [In Arabic]
- Al-Azhari, Muḥammad (2001). *Tahḍīb Al-luġatī*, Beirut: Dār Eḥyā Al-Turaṭ Al-‘arabi. [In Arabic].
- Al-Kulayni, Muḥammad (2008). *Al-Kafi*, Qom: Dār Al-Hadiṭ. [In Arabic]
- ‘amidi, Seyyed ‘amid Al Din (1996). *Kanz Al Favā'id*, Qum: Jāmi‘at al-Mudarrisīn. [In Arabic]
- ‘āmili, Zeyn Al dīn (1990) *Al Ruḍaī Al bahiyyaī*, Qum: Dāwari. [In Arabic]
- ‘āmili, Zeyn Al dīn (1993). *Masālik Al aḥām*, Qum: Mu’assasaī Al Ma‘ārif Al Islamiyyaī. [In Arabic]
- Anşārī, Murtaḍā (1995a). *Al-makāsib Al-muḥarramah*, Qum: Kungereh. [In Arabic]
- Anşārī, Murtaḍā (1995b). *Kitāb Al-Nikaḥ*, Qum: Kungereh. [In Arabic]
- Arāki, Muḥammad‘ali (1999). *Kitāb Al-Nikaḥ*, Qum: Nur Nigār. [In Arabic]
- Ayrawānī, ‘Alī (1986). *Hāshyaī Al-Makāsib*, Tehran: Vezārat Farhang. [In Arabic]
- Bahrānī, Yūsuf (1985). *Al-Ḥadāiq al-Nādiraī*, Qum: Mu’assasaī al-Islāmī. [In Arabic]
- Fāḍil Hindī, Muḥammad (1996). *Kaşf Al leṭām*, Qum: Jāmi‘at al-Mudarrisīn. [In Arabic]
- Fāḍil Lankarāni, Muḥammad (2001a). *Taḥṣil Al Şari‘aī - Al Ṭalāq*, Qum: Markaz Fiḥi. [In Arabic]
- Fāḍil Lankarāni, Muḥammad (2001b). *Taḥṣil Al Şari‘aī - Al Nikāḥ*, Qum: Markaz Fiḥi. [In Arabic]
- Fana’i, Abo Al Qāsim (2015). *Aḥlaq Din Şenāsi*, Tehran: Negah mo‘āsir. [In Persian]
- Fayumi, Aḥmad (1994). *Al Meşbah Al Munir*, Qum: Dār Al Hiġraī. [In Arabic]
- Feyḍ Kāşāni, Muḥammad (1997). Qum: Jāmi‘at al-Mudarrisīn. [In Arabic]
- Ġazālī, Moḥammad, *Eḥya’ ‘ulum Al Din*, Dār Al Kitāb Al ‘arabi. [In Arabic]
- Ġaziri, ‘abd Al-Raḥmān (1999). *Al-fiḥḥ ‘alā Maḍāhib Al-Arba‘aī*, Beirut: Dār Al-ṭaḳalayn. [In Arabic]
- Ġuhari, Ismā‘il, *Al-Siḥāḥ* (1952). Beirut: Dār Al-‘elm. [In Arabic]
- Hā‘eri, Ḥusein (2007). *Mabāni Fatāvi Fi Al-Amvāl Al-‘ammaī*, Qum: Dār Alttāfsir. [In Arabic]
- Hā‘eri, seyyed Moḥammad, *Kitāb Al-Manāhil*, Qum: Āl Al-Bayt. [In Arabic]
- Ḥakim, Seyyed Moḥsen (1996). *Mustamsak Al-‘urvaī*, Qum: Dār Al-Tafsir. [In Arabic]

- Ḥalabiyān, Ḥusein, Nāṣeri, Ḥusein (2018). *Chisti Šenāsi Mahr*, Mağalleh Fiḥ wa Uṣul. [In Persian]
- Hāshimī Shāhrūdī, Maḥmūd (2003). *Musu‘a‘ Al Fiḥ Al Islāmi*, Mu‘assasā‘ Dā‘era‘ Al Ma‘ārif. [In Arabic]
- Ḥillī, Ḥasan(‘Allāma) (1993). *Qavā‘aid Al-Aḥkām*, Qum: Jāmi‘at al-Mudarrisīn. [In Arabic]
- Ḥillī, Ibn Idris (1990). *Al-sarāeir*, 2nd ed, Qum: Jāmi‘at al-Mudarrisīn. [In Arabic]
- Ḥillī, Miqdād, (Fāḍil Miqdād) (1983). *Naḍd Al-qavā‘aid*, Qum: Āya‘at Al-allāh Mar‘ashi. [In Arabic]
- Ḥillī, Moḥammad (2008). *Idāḥ Al- Favā‘ed*, Qum: Mu‘assasat Ismā‘aeiliyan. [In Arabic]
- Ḥillī, Nağm Al din (Muḥaqqiq) (1988). *Sharāe‘a Al-islam*, 2nd ed, Qum: Mu‘assasā‘ Ismā‘aeiliyan. [In Arabic]
- Hoei, Abu al-Qāsim (1998). *Musu‘a‘ Al imām Hoei*, Qum: Mu‘assasā‘ Al imām Hoei. [In Arabic]
- Homeyni, Seyyed Ruḥ Al-lah, *Tahrir Al-vasilā‘*, Qum: Dār al-‘elm. [In Arabic]
- Ḥur ‘āmili, Moḥammad (1996). *Vāsā‘el Al-shi‘a‘*, Qum: Āl Al-bayt. [In Arabic]
- Ibn Fāris, Aḥmad(1984). *Mu‘ğam Maqāyis Al-luğā‘*, Qum: Maktab Al-e‘lām Al-islāmi. [In Arabic]
- Karki, ‘ali (1994) *Ġami‘ Al Maqāsid*, Qum: Āl Al-bayt. [In Arabic]
- Katuziyān, Nāsir (2009) *Ḥuquq Madani Hānewadeh*, Tehran: Entešar. [In Persian]
- Makārim Shīrāzī, Nāsir (2004). *Kitāb Al-Nikaḥ*, Qum: Imām ‘ali. [In Persian]
- Mešbāḥ Yazdi, Muḥammad Taqī (2011). *Ġame‘eh wa Tāriḥ*, Qum, Mu‘asseseh Imām. [In Persian]
- Meškyni, ‘ali, *Muštalaḥāt Al fiḥ*, [In Arabic]
- Mīrzā Qummī, Abu al-Qāsim (2007). *Rasā‘il*, Qum: Daftar Tabliqāt. [In Arabic]
- Mufīd, Muḥammad (1990) *Al Muqne‘e‘*, Qum, Jāmi‘at al-Mudarrisīn. [In Persian]
- Muḥaqqeq Dāmād, Seyyed Muštafā, *Ḥuquq Hānewadeh*, Qum. [In Persian]
- Nağafī, Muḥammad Hasan (1984). *Ġavāhir Al Kalām*, 7nd ed Beirut, Dār Eḥyā‘ Al turāt. [In Arabic]
- Raḍi, seyyed Muḥammad (1994). *Nahj Al balāğā‘*, Qum: Hīrat. [In Arabic]
- Sabzivāri, seyyed ‘bd Al ‘alā (1993). *Muḥaḍab Al ahkām*, 4nd ed Qum: Mu‘assasā‘ Al Manār. [In Arabic]
- Šadūq, Muḥammad (2007). *‘elal Al Šarā‘e‘*, Qum: Dāwari. [In Arabic]

- Šams Al Din, Muḥammad (1996). *Huquq Al Zuḡat*, Beirut: Al Mu'assasat Al duwaliya. [In Arabic]
- Šams Al Din, Muḥammad, *Al satr wa Al nazar*, Qum: Mu'assasat Al Manār. [In Arabic]
- Šubeyri Zangāni, Seyyed Musā (1999). *Kitāb Al Nikāḥ*, Qum: Mu'assasat Rāy pardāz. [In Persian]
- Subḥānī, Ja'far (1994). *Nizam Al talāq*, Qum: Mu'assasat Imām Sādiq. [In Arabic]
- Ṭabāṭabāyi Ḥā'eri, Seyyed 'ali (1998). *Riyāḍ Al Masā'il*, Qum: Āl Al-bayt. [In Arabic]
- Ṭureyḥi, Faḥr Al Din (1996). *Maḡma' Al Baḥrayn*, 3rd Edition, Tehran: Mortaḍavi. [In Arabic]
- Ṭūsī, Muḥammad (1987). *Tahḍib*, 4th Edition, Tehran: Dār Al Kutub Al Islāmiya. [In Arabic]
- Ṭūsī, Muḥammad (2008). *Al Mabsuṭ*, 3rd Edition, Tehran: Al Maktabat Al Murtaḍawiyya. [In Arabic]
- Yazdi, Seyyed Muḥammad Kazim (1999). *Al 'urwat Al wuṭqā*, Qum: Jāmi'at al-Mudarrisīn. [In Arabic]
- Yazdi, Seyyed Muḥammad Kazim (2001). *Ḥāšiyat Al Makāsib*, 2nd Edition, Qum: Mu'assasat Ismā'aeiliyan. [In Arabic]