

## Article

# Ayatollah Yusuf Sanei's Contribution to the Discourse of Women's Rights

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**Abstract:** Ayatollah Yusef Sanei was a prominent contemporary Shia scholar whose particular methodological approach led him to issue some of the most progressive Shia fatwas on the subject of women's rights. However, the ideas he expressed in the last decades of his life have scarcely been addressed in the English language scholarship. This article explores Sanei's broader jurisprudential approach and how he applied it to analyzing and often challenging traditional Shia rulings related to gender issues. The article first differentiates Sanei's approach towards jurisprudence from established methodologies, particularly in relation to his consideration of the Sunna as secondary to the Qur'an, his rejection of the practice of using consensus as an independent basis of legal rulings, his idea that Sharia rulings may change over time, and his strong emphasis on the Qur'an's messages of justice and human dignity. The article illuminates how this combination led Sanei to challenge traditional ideas about men's authority over women, a fixed socio-political role for women, and men's superiority in the areas of divorce rights, testimony and worth in blood money (*diya*), while concurring with earlier scholars on the unequal division of inheritance. Notwithstanding this latter exception, the article demonstrates that Sanei drew upon jurisprudential approaches in arguing in favor of equality between men and women in many areas.

**Keywords:** Qur'an; Shia jurisprudence; Ayatollah Yusuf Sanei; women's rights



**Citation:** Akbar, Ali. 2021. Ayatollah Yusuf Sanei's Contribution to the Discourse of Women's Rights. *Religions* 12: 535. <https://doi.org/10.3390/rel12070535>

Academic Editors: Ismail Albayrak and Hakan Coruh

Received: 18 May 2021

Accepted: 10 July 2021

Published: 15 July 2021

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## 1. Introduction

Ayatollah Yusuf Sanei (d.2020) was a pro-reform Iranian cleric and a source of emulation (*marja' taqlid*). He started lecturing in the Qom seminary in 1975 and served on the Guardian Council after the Iranian revolution of 1979. However, after a few years, he retired from his official political positions and devoted his time to teaching in the Qom seminary and writing books. Sanei taught *dars-e khārej*, which is the most advanced level of classes to be offered at a Shia seminary. Some of the religious ideas he expressed in the last two decades of his life—especially those pertaining to women's rights, the rights of non-Muslims, and freedom of religion—stand in sharp contrast to those of many Shia clerics.

Sanei became well known to the Iranian public following the controversial 2009 presidential election. After the official announcement of that year's election result, the two reformist candidates, Mir Hossein Mousavi and Mehdi Karubi, joined by many of their supporters, asserted that the election was fraudulent and its result was engineered by the state to ensure the then president Ahmadinejad's reelection. As a result, various types of demonstrations took shape in Tehran and some other major cities of Iran and persisted for almost nine months. Sanei defended the protesters, stating that the government should respond to their legitimate demands. He proclaimed that violating citizens' rights to engage in peaceful demonstrations was a "sin" (Rahimi 2012, p. 59). Sanei also objected to the house arrest of Mousavi and Karubi, warning hardliners several times against the violation of their rights. In 2013, Sanei supported the moderate candidate Hassan Rouhani in the presidential election. From that time until his death in 2020, he intermittently spoke out against traditionalist camps. In the last decade of his life, Sanei was often seen as politically suspect by the state (Takim 2019, p. 82).

Sanei's ideas are not well-covered in the English academic literature. Aside from passing references to him in a number of works analyzing Iran's reformist thinkers (Siavoshi 2017, pp. 241–42), contemporary Islamic thought (Kamali 2015, pp. 197–98), and contemporary Shia ideas (Takim 2014, pp. 102–3, 113; Takim 2018, pp. 488–89), there are not many scholarly articles in English that investigate his religious ideas (for exceptions see Mavani 2009; Takim 2019). Further, Ziba Mir-Hosseini interviewed Sanei, and some aspects of his ideas about women's rights are reflected in her piece (Mir-Hosseini 1999, pp. 144–69). Drawing on a rich array of primary source material in Persian, including Sanei's books, articles, and interviews, this article explores his ideas about women's rights. Like other Shia clerics, Sanei wrote extensively on jurisprudence (*fiqh*) and methods of deriving legal rulings from the primary sources of Islam, i.e., the Qur'an and the Sunna. The main focus of this article is the extent to which Sanei draws on these jurisprudential approaches to argue in favor of gender equality. Throughout the article, I will occasionally compare Sanei's ideas pertaining to women's rights to those of classical Shia scholars as well as selected contemporary traditionalist Shia clerics such as Ayatollah Makarem Shirazi and Ayatollah Gerami to demonstrate how Sanei, as a reformist Shia scholar, distanced himself from their rulings.

This article first explores Sanei's broader jurisprudential approaches. It then turns to an investigation of Sanei's ideas about women's rights. I will specifically focus on five main issues: (1) men's authority over women and women's socio-political roles, (2) women's right to divorce, (3) women's testimony, (4) the blood money (*dīya*) payable for men and women, and (5) women's right of inheritance. The article demonstrates that Sanei used jurisprudential approaches to argue in favor of equality between men and women in all these areas except inheritance. It is important to indicate from the outset that my approach to Ayatollah Sanei's ideas is theological and hermeneutical rather than being based on feminist theories. Therefore, while some Iranian feminist scholars such as Haideh Moghissi and Farideh Farhi may find aspects of Sanei's ideas—such as those pertaining to hijab and segregation between men and women as well as rulings on inheritance—problematic, Sanei's ideas, as this article demonstrates, are progressive, especially when considered in comparison to traditionalist Shia clerics.<sup>1</sup>

## 2. Sanei's Jurisprudential Approaches

Sanei's legal rulings are based on theoretical ideas that appear throughout his writings. These ideas give him a certain flexibility to challenge some of the dominant rulings found in classical and contemporary Shia texts. One fundamental notion Sanei emphasizes in his writings is that the Sunna should always be considered secondary to the Qur'an. He cites a hadith from the Prophet according to which the Prophet stated that, "O people! Whatever has been narrated from me, if it is consistent to God's Book, I have narrated as such, and whatever has been narrated from me and is inconsistent with God's Book, I have not said it" (Sanei 2006, p. 37). For Sanei, a *faqīh* should evaluate rulings found in *fiqh* literature based on the Qur'an, and if he or she finds them contrary to the Qur'an, they should be considered inauthentic (Sanei 2015, p. 22).

Sanei (2005, p. 11) also emphasizes that "a distinction between the opinion of jurists and the real Sharia is a necessity without which any change in the jurisprudential system and the legal system based on it is not possible". This means that we should distinguish between Sharia itself and our understanding of it. For Sanei, the former includes a set of sacred and unchanging principles, whereas the latter comprises our human approach to the Sharia, which is inherently colored by our personal experiences, meaning that it reflects the state of our knowledge and understanding of Sharia. Sanei insists that as long as we do not distinguish between the Sharia and our understanding of it, no genuine reform or change to inherited jurisprudence is possible (Sanei 2005, p. 11).

In traditional Sunni jurisprudence, there are four principal sources of law: the Qur'an, the Sunna, analogical reasoning (*qiyās*), and consensus (*ijmā'*). Unlike Sunni jurisprudence, in Twelver Shiism, *ijmā'* is not often considered a fundamental source of law, but as Clarke

(2018, p. 56) notes, it has been “in practice widely respected”. Indeed, many jurists have endorsed rulings based on the notion of consensus, even though their own research took them in another direction. Sanei opposes this approach, arguing that consensus should never be used as an independent source of legislation. For him, although *ijmāʿ* has been applied by Shia scholars in practice as one of the reasons for endorsing a religious ruling, consensus is a valid source only if we are sure that it has its roots in the authentic narrations of Shia Imams (Sanei 2018a, p. 575). According to Sanei, given that in Shia tradition, the door of *ijtihad* always remains open, we should not simply imitate the ideas of scholars of previous centuries (Sanei 2015, pp. 24–25; see also Sanei 2008, p. 54). Indeed, “the understanding (*fahm*) of previous scholars does not necessarily represent a more precise understanding, and the passage of time and [further] research into the writings and ideas of previous scholars help us to achieve a more precise and deeper understanding of religious sources” (Sanei 2015, p. 27).

Sanei refers to the term “dynamic *ijtihad*”, arguing that *fiqh* rulings require change based on the conditions of the modern period: “The conditions prevailing in the modern period and new developments [in human societies] require a form of *ijtihad* which takes two factors—i.e., time (*zamān*) and place (*makān*)—into serious account” (Sanei 2005, p. 12). This requires the jurist to be familiar with changing circumstances. The jurist should also take into account the effect of his opinion and fatwa on society. That is, a jurist should always be mindful of the situation of his or her society when making a ruling. The *faqīh* should be aware that if he or she endorses a ruling or passes a fatwa, that fatwa has certain consequences: the fatwa should be implementable (*qābel-e ejrā*) in the time and place it is issued (Sanei 2005, p. 44). For Sanei, as socio-political conditions change, the juridical rulings issued by jurists should reflect the new circumstances; otherwise, *fiqh* becomes ossified and loses its ability to respond to new circumstances. More importantly, if the rulings of the religion do not cohere well with the existing conditions, Islam could become isolated in today’s world (Sanei 2005, p. 31). This means that jurists should continue to revise traditional laws in keeping with the changing circumstances, and it is through this process that they are able to bring about the progression of Islamic laws, making dynamic *ijtihad* possible.

Sanei also emphasizes the importance of justice in religious rulings. What constitutes the spirit of Sharia is justice. According to Sanei, when it is said that the rulings of *fiqh* are fixed and unchangeable, the referent is the rulings’ spirit, i.e., their emphasis on the concept of justice (Sanei 2015, p. 15). Therefore, when a *faqīh* seeks to issue a religious ruling, he or she should always consider justice as the fundamental principle based on which all law-making processes should be conducted (Sanei 2015, p. 20). Based on the Qur’ānic verse which states that “God is never unjust to [His] creation” (Q 41:46), Sanei argues that all rulings of Islam should be just and there should be no oppression or injustice (*ẓulm*) in rulings (Sanei 2015, p. 22).

The final feature of Sanei’s approach to legal rulings is his emphasis on human dignity. Sanei argues that in any legal ruling, what should be taken into serious consideration is that humans have been given dignity: “Islam and the Qur’ān dignify mankind . . . and none of [the attributes of] race, religion, nationality or geography play a role in Islamic human rights” (Sanei 2015, p. 51). Referring to the Qur’ānic verse which reads “People, We created you all from a single man and a single woman” (Q 49:13; see also Q 4:1), Sanei argues that the Qur’ān prioritizes human dignity over a person’s religion or gender (Sanei 2006, p. 19; see also Sanei 2015, pp. 55–56). The Prophet stated that the children of Adam are all of the same origin and are as such brethren in humanity: “O People, your Creator is one . . . All of you are from Adam, and Adam was created from earth . . . An Arab has no superiority over a non-Arab” (Sanei 2006, p. 20). This means that piety and good conduct are the only things that distinguish people from each other. For Sanei, emphasis on the concept of human dignity and its priority over attributes such as race and religion is an important tool that jurists should employ in their legal rulings.

The remainder of this article explores the extent to which the aforementioned jurisprudential approaches appearing throughout Sanei's work are used by him to argue in favor of gender equality.

### 3. Men's Authority over Women and Women's Socio-Political Role

Traditionalist Shia clerics often emphasize the “domestic” role of women. According to Ayatollah Makarem Shirazi, women have sensitive, delicate, and emotional characters and personalities, and this has prompted them be more occupied by matters concerning the household. That is, they have much less responsibility in the social arena than men. Women, according to Makarem, are given “a stronger capacity for tender emotions and feelings, and this superiority in feeling necessitates that we . . . entrust men with all of the duties of society, which require, more than other things, strength of thought and distancing from the tender emotions and personal sensitivities” (Interview with Bauer 2015, p. 223). In addition, governing the family and providing for its members' well-being remains one of the duties of men: “It is necessary that the responsibility of governing, judging, and guiding the family falls on the shoulders of the man, and that in these matters, the man has been made superior” (Interview with Bauer 2015, p. 223). Therefore, men, Makarem concludes, should have the final say in any dispute over household matters.

The idea that a woman should not occupy a position of rulership or judgment is a tradition with deep roots in Islam, and ideas that endorse this can be seen in classical Shia texts. According to classical Shia scholar Muḥammad b. Ḥasan Ṭūsī (d. 470/1067), “it is not permissible for a woman to be a judge in any matter related to [Sharia] rulings” (*lā yajūz an takūn al-mara' ghādiya fī shay' min al-aḥkām*) (Ṭūsī 1986, vol. 6, p. 213). Another classical Shia scholar, Muḥaqqiq al-Hillī (d. 676/1277), confirms this idea, stating that “a woman is not permitted to become a judge, even if she gains all the relevant qualifications” (Muḥaqqiq al-Hillī 1987, vol. 4, p. 860). According to a hadith referred to in the classical Shia collection of hadith *Wasā'il al-Shī'a* (Ḥurr al-ʿĀmilī 1988, vol. 27, p. 13), one must “avoid referring to the rulers and judges of the oppressive government, but refer to a man who is aware of the rules and teachings of the religion and consider him your judge and arbitrator among yourselves”. Women's exclusion from certain social and political activities was not confined to the arena of judgeship. Classical texts usually dictate that women not become *mujtahid* or sources of emulation and prevent them from leading prayer (see for example Ṣadūq 1993, vol. 4, p. 364). According to the contemporary traditionalist Shia scholar Ayatollah Gerami, there is no doubt that some women throughout the course of Islamic history have been superior to and nobler than many men, examples being Fatima, the daughter of the Prophet Muhammad, and Zaynab, the daughter of Fatima. Despite Fatima's nobility, Gerami stresses, the Prophet never made her—or any other woman—a judge, the commander of the army or the governor of a city; when he occasionally left the city, the Prophet appointed a man as his deputy—an example which Gerami uses to challenge the legitimacy of women serving in roles such as judge or ruler (Interview with Bauer 2015, pp. 224–45).

Sanei's approach stands in sharp contrast to the ideas of traditionalist scholars and jurists. When it comes to issues related to domestic affairs and the notion of men's authority over women, Sanei argues that the relationship between men and women should be established based on cooperation and mutual understanding rather than on the authority of one partner over another: “Our religious belief is that neither man nor woman is the servant of the other and marriage is not a matter of ‘employment’ (*estekhdām*), but cohabitation” (Sanei 2003a). For Sanei, a man cannot “impose his will, act capriciously, and put pressure on his wife . . . As far as possible family matters must be based on consultation and understanding (Mir-Hosseini 1999, p. 150). Therefore, when it comes to matters such as a woman seeking permission from her husband to leave the house, Sanei states:

Men and women can go out of the house and do not require each other's permission . . . [However] if a woman's going out prevents her from fulfilling her obligatory duties and matters related to their married life, or [her going out] damages the husband's reputation, she needs to seek permission from him, in the same way that if the man wants to go out and his going out creates injustice for his wife, the man should get permission from his wife. Therefore, in order to protect each other's rights, in matters in which the woman requires permission [from her husband], a man should also seek his wife's permission. (Sanei 2003a)

With regard to a woman seeking permission from her husband to leave the house, Sanei also stated that the wife "can stipulate from the very beginning of her marriage, as part of the marriage contract, that she can leave the house whenever she wants to without permission" (Mir-Hosseini 1999, p. 149). Sanei has also defended the social rights of women, arguing that Muslim women are allowed to engage in all social and political activities in society. Indeed, there is no difference between men and women in matters pertaining to participation in social and political affairs as long as women observe all their religious obligations such as wearing hijab. For Sanei, although the Islamic Republic saw it as a *maṣlaḥa* (ruling based on the preservation of the public interest) to prevent women from entering stadiums to watch, for instance, football matches, there is no problem with their admission to such venues, and women should be permitted to enter stadiums to watch matches alongside men (Sanei 2003e). According to Sanei, women are eligible to hold the positions of judge, president, and even leader of the country. The condition of "manhood" is not a necessary condition for becoming a judge, and there is no valid reason to limit the position of judgeship to men exclusively. The main criterion for becoming a judge, according to Shia sources, as Sanei states, is the acquisition of relevant knowledge and being just (*ʿadel*)—a criterion that women can acquire too:

Being a man is not a condition for judgeship, the criterion for judging is the moderation (*ʿtedāl*) of the judge and being just in the judiciary, [and] acquiring knowledge with regard to Islamic principles of jurisprudence and laws, and we have no valid reason for [applying] the condition of manhood [to someone becoming a judge]. (Sanei 2018b, p. 259)

To exclude women from becoming judges, as Sanei claims, goes against reason (*ʿaql*), customary standards (*ʿurf*), and justice (*ʿedālat*) (Sanei 2018b, p. 259). He also maintains that there is no limitation for women in terms of serving in certain religious positions, such as becoming a *marjaʿ* or source of emulation. Here, Sanei refers to two hadiths found in classical Shia literature, which give certain authority to *fuqahā*, considering them the deputies of prophets and Imams during the era of the major occultation—the hadiths that are often used to justify the theory of the "Guardianship of Jurist" (*velayat-e faqīh*) (for such hadiths see Kazemi Moussavi 1996, pp. 29–30). These hadiths state, "the *fuqahā* are trustees of prophets" and "the *ʿulama* are the heirs of prophets". Sanei does not use these hadiths to support the theory of the "Guardianship of Jurist" but uses them to argue that the institution of *marjaʿiyyat* is not exclusive to men, since the verses do not indicate a particular gender when referring to the *fuqahā* or *ʿulama*. This means that both men and women are able to become *marajaʿ* (sources of emulation) and both are able to pass fatwas if they acquire the necessary knowledge (Sanei 2018b, p. 333). Sanei argues that if the term "man" (*rajul*) is employed in *fiqh* literature in connection to matters related to *marjaʿiyyat*, this only reflects the language conventions of the time of writing, in the same way that sixth-century Arabic conventions led several passages of the Qurʾān to be addressed to men alone (Sanei 2018b, p. 259). Finally, Sanei reasons that nowhere in the Qurʾān or reliable traditions from the Prophet or Shia Imams are men alone encouraged to acquire scientific knowledge. In Islam, all humans are encouraged to acquire knowledge, and if we exclude women from acquiring the highest level of religious knowledge—the knowledge that is required for one to become a *marajaʿ*—we have actually acted against Islam's message (Sanei 2018b, p. 333).



#### 4. Women's Right to Instigate a Divorce

Traditionally, the right to divorce a partner belongs to men in Islam, and the vast majority of classical Sunni and Shia scholars ruled that only men have the right to instigate a divorce. During the past few decades, some Iranian Shia clerics have argued in favor of giving women the right to instigate a divorce under certain circumstances. For example, Ayatollah Ibrahim Jannati argues that although the right to divorce is among the rights granted to a married man, women can apply for divorce under certain conditions: "Although divorce is [a right] held by the man, there are certain circumstances in which woman can acquire the right to divorce. Of those circumstances, one is stipulation of the right in the contract itself, another is (unbearable) hardship" (Jannati n.d.a).<sup>2</sup> Hardship encompasses situations in which the husband mistreats the wife in a way that she cannot continue living with him and when the husband does not fulfil the fundamental rights granted to the wife through the marriage (Jannati n.d.b). The idea that women can include the right to divorce their husbands in the marriage contract was expressed by Ayatollah Khomeini in the early years after the establishment of the Islamic Republic in Iran. In response to an *estefta* posed by some women, Khomeini responded:

For honorable women, the holy Sharia has deemed an easy way for them to take the lead in divorce. This means that when marrying, if they specify that they want the right to divorce in absolute terms or that the woman herself has the right to divorce in certain circumstances, for example, if the man mistreats her or takes another wife, then there would be no problem for women anymore since they themselves can [instigate a] divorce [under such conditions]. (Khomeini 2010, vol. 10, p. 78)

Sanei takes a different position in relation to women's right to divorce. His ideas are more flexible about a woman's right to divorce her husband compared to those of Jannati and Khomeini, since he believes that even without a specified term in the marriage contract, women are able to annul the relationship under certain conditions. Sanei acknowledges that Islam's position, giving the right of divorce to men, is unquestionable. His point of departure in addressing whether women have the right to initiate divorce is his view that the position of Islam vis-à-vis divorce is not an injustice to women, given that the man has the right to divorce in exchange for his obligation to pay a dowry to his wife (see Sanei 2003d). Here, Sanei refers to the concept of *ṭalāq khul'*. *Ṭalāq khul'* occurs under circumstances in which a woman declares her extreme hatred towards her husband and reluctance (*ikrāh* or *kerāha*) to stay with him. Indeed, her hatred has reached a point where she is neither able nor willing to continue living with her husband. According to Sanei, when a relationship between spouses deteriorates to the degree that the wife severely detests her husband, the man is obliged to divorce her (Sanei 2007, p. 23). In such a case, the wife should return the dowry (*mahr*) that had been given to her by the husband at the time of marriage, and if the husband has not yet given the dowry to his wife, she must abandon her claim to it (Sanei 2007, p. 30). Under such circumstances, the man should divorce his wife, and if he refuses to do so, the court, according to Sanei, should intervene and endorse the woman's decision and her right to annul the marriage. Sanei argues that this is a just decision for both partners; indeed, an injustice would be incurred in the case of a woman returning her dowry and the man retaining the sole authority to divorce (Sanei 2018b, p. 265; Sanei 2007, pp. 44–45).<sup>3</sup>

Sanei also employs Qur'anic principles of justice in his juridical ruling about women's right to divorce. According to him, it goes against the principle of justice and the principle of human dignity if we ignore women's right to divorce under the circumstances explained above. The human dignity of the wife is not met if she is forced to live with a husband she detests entirely (Sanei 2018b, p. 265). Sanei also argues that, in annulling the marriage, a woman is not obliged to give back anything more than her dowry. To strengthen his argument, Sanei quotes a Qur'anic verse that reads "And your Lord is never unjust to [His] servants" (Q 41:46). This verse means that God promises to be just to all human beings,

regardless of their gender; the husband violates the right of his partner if he requires more than the *mahr* in exchange for granting the right to divorce to his wife (Takim 2019, p. 93).

It should be noted that the notion of *ṭalāq khulʿ* has been mentioned in classical Islamic sources; however, as Haifa Jawad (1998, p. 81) notes, “the husband has to agree to free his [wife]”, meaning that the husband has the final say in the matter of divorce. In addition, women seeking to initiate a divorce in the form of *ṭalāq khulʿ* often lost some of their rights; for example, the wife “may lose her right to maintenance during the waiting period” (Jawad 1998, p. 81). Many contemporary Shia *fuqahā*, unlike Sanei, argue that even if a woman’s hatred of her husband reaches a level whereby she cannot continue her married life, it is still the man who should agree to divorce his wife. For example, Ayatollah Khoi, while acknowledging the notion of *ṭalāq khulʿ*, argues that the man should have the final say in divorce; if he does not agree to divorce his wife, even if the wife hates the husband, the marriage should not be annulled (Khoi 1989, pp. 304–5). Ayatollah Sistani states that a wife has the right to *ṭalāq khulʿ* only if “her hatred has reached the extent that she no longer allows [her husband] conjugal rights” (cited in Takim 2019, p. 85).<sup>4</sup> As demonstrated, Sanei’s approach is different since he believes that a woman has an unconditional right to a divorce if she hates her husband and gives up her dowry, and in such circumstances, the court is obliged to defend this right and annul the marriage.

## 5. Testimony

The Qurʾān considers the testimony of two women worth that of one single man: “Call in two men as witnesses. If two men are not there, then call one man and two women out of those you approve as witnesses, so that if one of the two women should forget the other can remind her” (Q 2:228). Based on this verse, some contemporary Shia jurists believe that when there are two men giving evidence in court, they can express their ideas independently, but when there is a man and two women as witnesses, the women should appear together, and their testimony considered one. Ayatollah Makarem Shirazi states that in such a case both women should attend together, and if one of them finds errors in the evidence of the other, the former can remind the latter. According to him, “since women may be affected by their strong emotions, and may not follow the right path in testifying because of forgetfulness or other things, one can correct the other” (Makarem Shirazi n.d.a). He stresses that there is a possibility of forgetfulness on the part of men too, but is quick to emphasize that the probability of this occurring is lower in men’s than women’s evidence (Makarem Shirazi n.d.a). Ayatollah Gerami presents a somewhat similar argument, stating that:

When it comes to the matter of testimony, God considers the possibility of a woman’s error, mistake or deviation from the truth as greater than that of a man. This really is a fact. Women are more emotional than men; the presence of this strong sense of emotion increases the likelihood of error. Since in judgment and testimony, the key and important issue is to discover the truth, God considers two women [should attend] for if one of them errs, the other can correct her . . . [But] God has not totally ignored the testimony of women. (Khabar Online 2013)

Gerami grounds his argument in what he considers a biological distinction between men and women, i.e., women’s inclination towards forgetfulness and emotionality. Further, Gerami states that the Qurʾānic ruling about testimony is eternal and unchangeable and thus applicable to all times and all places. According to him, in the first part of Q 2:282, the expression “O you who believe” is mentioned—an expression which confirms for Gerami that the verse is not limited to a particular time and place: “When God uses such an expression, this demonstrates that the command stands beyond time and place (*farā-makānī va farā-zamānī*). This is similar to the commands we find in rulings pertaining to prayer and other legislative rulings in the Qurʾān” (Khabar Online 2013).

Sanei opposes this approach. He acknowledges that many *fuqahā* in the course of Islamic history up until today have considered the testimony a woman worth half of that of a man. Leaning on his idea that the *ijmāʿ* of previous generations of *fuqahā* should not be

considered as a basis for endorsing a ruling and his conviction that the door of *ijtihad* in Shiism is not closed, Sanei challenges the ideas put forward by scholars such as Makarem and Gerami. He argues that Q 2:228 was revealed in relation to commercial affairs and pertained to a time when women were not familiar with financial matters. Sanei cites the context of revelation, suggesting that since women were unfamiliar with commercial affairs at that time, a woman may not have recalled details of financial dealings and a second woman should have been there to remind her. Therefore, Sanei argues that Q 2:228 is only relevant to the time of Qur'anic revelation when women were not normally knowledgeable about commercial matters such as debt and business contracts. This means that no "inherent" forgetfulness of women is inferred in the Qur'an (Sanei 2003b). Based on his idea that religious rulings should be consistent with the spirit of the age (*ruh-e zamāneh*), Sanei goes on to state that this Qur'anic ruling is not applicable in our time:

This ruling is related to past ages, when they [women] were constantly living in ignorance and forgetfulness, were deprived of scientific learning and did not consider themselves to have any role in society. However, in the present age when women are engaged in the study of various sciences and [are knowledgeable] in various disciplines and fields of science, and have open minds, and critical thoughts and ideas, and many of them are scientists and researchers in different fields, it cannot be stated that the testimony of two of them is equal to that of one man. (Sanei 2003b)

In a conversation with Liyakat Takim, Sanei states that Q 2:228 does not make a general ruling about the testimony of men and women that should be implemented in all times and under all circumstances. The criterion for giving testimony, according to Sanei, is "knowledge and awareness", and thus men and women can "be of equal number when they have equal knowledge" (Takim 2019, p. 80; see also Sanei 2003b).

## 6. Blood Money

With regard to the ruling on blood money (*dīya*), the vast majority of Shia *fuqahā* including those of both the classical and contemporary periods believe that the blood money payable in compensation for the murder of a woman should be half of that payable for the murder of a man. Prominent classical Shia scholars rule that the *dīya* of a woman is worth half of that of a man, stating that this ruling is among the matters of consensus among scholars (see for example Ṭūsī 1986, vol. 5, p. 254).<sup>5</sup> In the contemporary period, Ayatollahs Khomeini (1970, vol. 2, p. 558) and Khoi (1990, vol. 2, p. 205) confirmed this ruling. Makarem Shirazi also defends the position that the blood money of a woman should be half of that of a man, connecting it to the idea that the man is the breadwinner of the family, and thus when a man is murdered, the family often encounters a financial crisis that should be compensated for with a larger amount of blood money. Therefore, if the murdered party is a man and his family accept *dīya* instead of *qisās* (retribution), the killer should pay double the amount payable when the murdered party is a woman (Makarem Shirazi n.d.b; see also Etemad Online 2019). According to Makarem, the reason for women's *dīya* being half of that of men is not related to women's being inferior to men but is driven by economic considerations (Makarem Shirazi n.d.b).

Sanei's ideas about blood money stand in sharp contrast to those of many Shia clerics. His point of departure in challenging the ideas of many classical and contemporary scholars is his view that the *ijmā'* of scholars cannot be considered an independent reason for the endorsement of the prevailing ruling on *dīya*.<sup>6</sup> Instead, Sanei refers to the Qur'an to question this consensus. He cites Q 4:92, which reads, "If anyone kills a believer by mistake he must free one Muslim slave and pay compensation to the victim's relatives". Sanei argues that in this verse, no distinction between the blood money of a man and a woman is indicated. Another verse, Q 5:45, reads, "We prescribed for them a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, an equal wound for a wound", and no distinction between men and women is mentioned there either (Sanei 2018a, p. 578).



Sanei also reasons that the lives of men and women have equal worth from a Qur'ānic perspective. The Qur'ān considers humans ontologically similar inasmuch as both women and men are created from the same soul and have been endowed with the same natures, although they are biologically different: “O humanity! Be mindful of your Lord Who created you from a single soul” (Q 4:1 and Q 49:13; for other similar verses see Q 6:98 and Q 7:189) (Sanei 2018a, p. 580). Based on these verses, Sanei questions the consensus on blood money: “Men and women are both human. Why would we consider the blood money of one human half of that of another human?” (Sanei 2003c) That is, blood money is connected to the worth of human life, and if we consider any difference between the blood money of men and women, we have done an injustice to the Qur'ān's message that men and women are ontologically similar. Sanei also challenges the proposition linking the greater value of men's blood money to their breadwinning role in the family. According to him, the economic role of men and women is not fixed but has differed throughout the ages:

The difference between the economic role of men and women is not a fixed matter and is different in different societies and cultures. If we attribute the difference between the blood money of men and women to the lesser role of women in economic affairs, we should also accept that with a change of situation, this ruling should be changed as well. For example, when the economic role of men in a society or in a particular circumstance is less than that of women, we should consider men's blood money as half of that of women's. (Sanei 2018a, p. 580)

Sanei acknowledges that there are some traditions narrated from the Prophet and the Shia Imams ruling that the blood money of women should be worth half of that of a man. As explained above, Sanei argues that these traditions should be evaluated in light of Qur'ānic verses such as Q 4:92 and 5:45. In addition, even if those traditions are authentic, they have to be understood in the context of the time in which Islam emerged. In pre-Islamic Arabian society, some new-born girls were buried alive (Q 16:58–59); women were not respected and did not receive any share in inheritance. Under such conditions, where men and women were not equal in the way we understand the notion of equality today, the only practical approach was to determine the blood money of men to be double that of women. Sanei even maintains that this Islamic ruling was “progressive” for the society to which Qur'ān was revealed (Sanei 2018a, p. 585). He concludes that even if we confirm the classical ruling on blood money by tracing its source to authentic traditions, this does not mean that the ruling is fixed and unchangeable (Sanei 2018a, p. 586). The classical ruling on blood money was relevant to the specific circumstances of its issuance; if we consider that rulings should be altered in response to changes in time (*zamān*) and place (*makān*), this ruling should undergo substantial revision (Sanei 2018a, p. 588).

## 7. Inheritance

The Qur'ān considers a woman's share of inheritance to be half of that of a man: “Concerning your children, God commands you that a son should have the equivalent share of two daughters” (Q 4:11; see also Q 4:176). In the traditions narrated in Shia sources, women's lesser share in inheritance is attributed to men having more responsibilities: a man should pay dowry to his wife, provide for the well-being of the family including financially supporting his wife and children, engage in military jihad and be responsible for paying blood money (Hurr al-ʿĀmilī 1988, vol. 17, pp. 436–39; see also Osman 2015, pp. 159–60). During the past few decades, some modernist Muslim scholars have contextualized Qur'ānic verses about inheritance, arguing that the classical ruling of inheritance should undergo substantial change in the light of the significant financial contributions that many women make to the family today.<sup>7</sup>

Sanei does not apply his idea of equality between men and women—which he applies to many gender issues—to inheritance, adhering instead to the traditional Islamic ruling that a man's share of inheritance should be double that of a woman. For Sanei, the classical law of inheritance is one key area related to women's rights that is not subject to change in the contemporary period. Indeed, this is an area in which men should retain more rights

than women. Sanei's argument is based on the idea that men still have more economic responsibilities to the family and are the main breadwinners. He also reasons that men should pay women *nafaqah* (maintenance) as well as dowry (Sanei 2003d). Having more economic responsibilities necessitates that men receive a larger share of inheritance. Sanei also reasons that a man's greater share of inheritance can be invested in his business, leading in turn to an increase in the total household income (Fararu 2010).

It remains unclear why Sanei does not apply the same reasoning he uses for the equality of men's and women's blood money to the matter of inheritance. When it comes to the rule of blood money, as already demonstrated, Sanei reasons that the economic roles of men and women differ in different time periods, and that it is not unusual in some situations for women to contribute even more than men to the family's financial position. It is unclear whether Sanei considers the classical ruling of inheritance in Islam as something fixed and unchangeable or a ruling which could undergo substantial revision in light of new circumstances, i.e., women's significant financial contribution to the welfare of the family. Having said this, it seems that Sanei views blood money as more than a matter of family finances, attributing the issue, as I explained, to the value of human life, which he believes should be considered equal between men and women. It should be noted that with regard to a woman's inheritance from her husband, Sanei states that the woman can inherit all her husband's property if the latter has no other inheritor. This stands in conflict with the ideas of many Shia jurists who believe that in such circumstances, a woman would gain only her specified share of inheritance and the rest should be given to the government (see Sanei 2005; Tabnak 2020).

## 8. Other Differences between Men and Women

In addition to rulings on inheritance, Sanei explains that there are other differences between men and women. In his interview with Mir-Hosseini, Sanei defended the segregation between men and women in Islamic society. According to him, "we have a principle [in Islam] that men and women are forbidden to each other, that is, they must keep their distance in gaze and touch" (Mir-Hosseini 1999, p. 155). The principle of segregation should be extended in an Islamic society to matters such as health services. For Sanei, although men can assist in cases of emergency, such as there being no female gynecologist available when a woman goes into labor, "it's a tragedy if we need men for women's childbirth" in an Islamic society (Mir-Hosseini 1999, p. 158). Far from being "discrimination", Sanei insists that this Islamic rule naturally becomes "the motor for women's progress in the sense that it encourages them to achieve all those things that men achieve in society" (Mir-Hosseini 1999, p. 157). This means that the full implementation of the idea that "women should deal with women's affairs" serves as a driving force for women to participate in every aspect of society (Mir-Hosseini 1999, p. 156).

Sanei's ideas about hijab are close to the vast majority of Shia scholars, and like them, he defends the classical rulings on hijab. Sanei considers hijab one of the essentials of Islam, which all Muslim women should follow. According to him, women should cover all parts of their body except their face, palms and ankles (Sanei n.d.). For Sanei, women should avoid using make up outside the home or in the company of unrelated men; they can, however, use make up at home amongst their family members including their husband (Sanei n.d.).

## 9. Conclusions

This article demonstrated that Sanei uses certain theoretical approaches such as the consideration of the Sunna as secondary to the Qur'an, the rejection of the practice of using consensus as an independent basis of legal rulings, the idea that rulings may change over time, and a strong emphasis on the Qur'anic messages of justice and human dignity to argue for the equality between men and women. Sanei never critiques Qur'anic precepts or rulings in the classical *fiqh* literature, arguing that they were appropriate in their own times. As demonstrated, on occasion, he defends the rulings of Islam in the era of revelation,

comparing them to pre-Islamic practices to argue that while some Qur'ānic laws were progressive at that time, they should not be applied under today's circumstances. For example, he attributes the Qur'ān's approach to testimony to women's inexperience in commercial affairs at the time of revelation and argues that this ruling is not applicable today given the change of context. In another instance, Sanei states that the classical Islamic approach to blood money was relevant to and even progressive for the societal conditions of Arabia when the Qur'ān was revealed—when women were considered worthless creatures without any rights (Sanei 2018a, p. 585). Further, in his interview with Mir-Hosseini, Sanei stated that the Prophet and Shia imams, unlike the “erroneous culture of the time which didn't honor daughters”, stressed “their [maternal] descent” (Mir-Hosseini 1999, p. 149). This means that the Qur'ān issued these rulings at a time when societal conditions were very different to those of our own time. Therefore, Sanei's approach is based on the idea that the legal rulings of the Qur'ān, and by extension those found in *fiqh* literature, are not fixed and unchangeable and could undergo substantial revision in light of new circumstances.

As demonstrated, Sanei did not extend this approach to the classical Islamic ruling on inheritance. His reasoning for the inequality between men's and women's shares of inheritance is rooted in their unequal financial contributions to the well-being of the family and the greater financial responsibilities of men. Therefore, the question that remains unanswered in his work concerning inheritance is whether women's shares of inheritance would be equal to men's under circumstances in which both contributed equally to the well-being of the family. In addition, he strongly favored the classical rulings on hijab and supported the notion of gender segregation. Despite his adherence to the classical Islamic laws in these areas, Sanei, as demonstrated, contributed significantly to extending women's rights by reinterpreting relevant verses of the Qur'ān and classical *fiqh* rulings.

**Funding:** This research received no external funding.

**Institutional Review Board Statement:** Not applicable.

**Informed Consent Statement:** Not applicable.

**Conflicts of Interest:** The author declare no conflict of interest.

## Notes

- <sup>1</sup> For Haideh Moghissi's criticism of Islamic feminism, see (Moghissi 2002, pp. 125–48). While Moghissi does not argue that “reading and rereading Islamic texts from a feminist perspective is not a worthwhile project”, such a project has its own limits: “one could reasonably expect that the reading of the Sharia and other holy texts from a secular feminist perspective should aim at demonstrating the limits which the Islamic Sharia provides as a chosen vehicle for changing the gender role” (Moghissi 2002, pp. 144–45). For another critique of the ideas of Iranian religious intellectuals on women's rights, see (Farhi 2001).
- <sup>2</sup> Translation is slightly modified.
- <sup>3</sup> In his interview with Mir-Hosseini, Sanei noted that in the condition when the marriage causes the woman harm, “she can annul the [marriage] contract and go to her father's house, if she wants” (Mir-Hosseini 1999, p. 162). Mir-Hosseini herself finds Sanei's idea about women's right to divorce a progressive approach that would be welcomed by “all feminists” (Mir-Hosseini 1999, p. 168).
- <sup>4</sup> Translation is slightly modified. Jannati mentions this form of divorce in his treatise, but does not explain it in detail. When considering the conditions under which a woman has the right to divorce, he does not mention the notion of *ṭalāq khul'* (See Jannati n.d.b).
- <sup>5</sup> Sanei himself acknowledges that most classical Shia scholars endorsed such as ruling (Sanei 2018a, p. 569).
- <sup>6</sup> He cites Sahib Jawahir, who states that this ruling is among the *ijmā'* of *fuqahā* (Sanei 2018a, p. 575). Sanei also refers to Muqaddas Ardibili, who argues against the dominant ruling on blood money (Sanei 2018a, p. 583).
- <sup>7</sup> Fazlur Rahman, for example, argues that this ruling reflects “the function of their [men's and women's] actual role in traditional society”, noting that “changes in shares must ... undergo radical changes” due to the social changes that have occurred in human society (Rahman 1982, p. 297). For the ideas of some modernist scholars and religious intellectuals about women's rights see: (Akbar 2020; Akbar and Saeed 2020).

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