

Article

The Bāb on the Rights of Women

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Abstract: In his writings, the Bāb (1819–1850), the founder of the Bābī religion, introduced laws and pronounced ethical injunctions pertaining to women that marked a significant departure from Muslim legal norms and social customs prevailing in Iran and the wider Islamic world. His statements signal a deliberate attempt to improve the status of women, including in marital relations. They addressed issues such as *mut'ah* and *tahlil* marriages, polygyny, bridal consent, divorce and spousal relations. This article examines the Bāb's statements on these issues and reflects on their significance for the rights of women in the context of Muslim juridical opinions and social customs, focusing mainly on the nineteenth and early twentieth centuries.

Keywords: the Bāb; Bābī laws; women's rights; marital relations; Iran; Islamic world; Islamic jurisprudence; Muslim social customs

1. Introduction

It is generally acknowledged that the religion of the Bāb (1819–1850) accorded women greater rights than they possessed in the nineteenth century in Iran and the wider Middle Eastern and North African region. In a milieu in which legal norms and cultural traditions asserted men's superiority and maintained their dominance over women, the Bāb introduced laws and pronounced ethical injunctions that afforded women greater privileges and freedoms and addressed specific practices that negatively affected their position in the family and society.

In addition to his legal and ethical statements, the Bāb's more egalitarian view of women is evident in his deep affection, care and respect for his wife, mother and grandmother (Afnan 1995, pp. 211–13), and in his support and defence of Ṭāhirih, his foremost female disciple, who was censured and attacked by some of her male coreligionists for claims and behaviour that they found troubling and contrary to the teachings of the Bāb (Mohammadhosseini 2018, pp. 247–48; Momen 2011). Ṭāhirih later played a central role in proclaiming the break with Islamic *shari'a*, entailed in the message of the Bāb; she flagrantly transgressed the rules of veiling of women considered inviolable by Muslim jurists (Afaqi 2004; Mohammadhosseini 2018).

Although some important aspects of the Bāb's teachings and laws pertaining to women have been discussed previously, there is ample room for further research (Afnan 1995; Lawson 2001; Saiedi 2008, pp. 322, 329–30; Momen 2011). This brief study focuses on specific statements of the Bāb related to marriage, divorce and spousal relations and attempts to explain and tease out their implications and significance in the context of Islamic legal norms and social and cultural practices among Muslim populations. In particular, it seeks to shed light on aspects of his teachings and expositions that have not been examined previously.

The Bāb aimed to improve the status of women and in particular the position of the wife within the marriage through various measures. He banned and nullified the degrading practices of *mut'ah* (literally, “pleasure”, “enjoyment” or “gratification”) and *tahlil* (literally, “to sanction” or “to make lawful”) marriages, made bridal consent to marriage a general requirement without exceptions, impeded husbands' access to divorce, restricted polygyny



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and made statements concerning relations between marriage partners that emphasized the rights of wives in ways that contrasted sharply with prevailing norms and customs.

A note of caution is due here. The writings of the Bāb are highly complex and pose particular challenges to scholars (Lawson 2012, 2018; Saiedi 2008; Lambden 2020). In the case of some of his precepts and injunctions, the reader can readily see that they directly address specific Muslim laws and practices prevalent in his time. His laws of inheritance are one such example. In a departure from the general Qur'anic rule regarding the children of the deceased that entitled a male to the share of two females (Q. 4:11), the Bāb ruled in the Arabic Bayān (Exposition, see below), *vāḥid* 10, *bāb* 3 (unity 10, chapter 3; hereafter 10:3) that the share of the children be divided equally between them regardless of their sex (The Bāb n.d.a). Other laws and ethical directives of his, however, seem to be tacit responses to certain unspecified norms that cannot be easily identified from the context. Moreover, the Bāb's legal statements are very brief and short on details. These are but some aspects of the complexity of his writings. Pending further research, some of the inferences presented in this study must be considered tentative.

Islamic law in this article refers to classical Islamic law as formulated and developed by Muslim jurists over the course of more than a millennium prior to the mid-nineteenth century. It comprises a vast corpus of disparate rules, a small fraction of which is derived from the Qur'an—the principal source of Islamic law. The Bāb articulated his teachings and legal precepts in a context and region in which Islamic law was dominant and in which Muslims constituted most of the inhabitants. For this reason, the present study focuses on norms of Islamic jurisprudence and customs and mores of Iranians and other Muslim populations. There were differences among and within Sunni and Shi'i legal schools. Moreover, Muslim social customs did not always fully conform to Islamic legal norms. In addition, not all the social and cultural practices discussed in this article were (or are) confined to the Muslim populations of Iran and the wider region. Some cultural practices are more prevalent among non-Muslim peoples than Muslims. For example, in our time, polygamous marriages are less common in Muslim countries than in parts of Africa, and this would also have been the case in the time of the Bāb.

The Bāb put forth his ideas before Muslim scholars and intellectuals began to critically examine the status of women in Muslim societies and identify areas in which social customs diverged from Islamic principles and teachings. In recent decades, with the rise of Islamic feminism, progressive Muslim scholars have offered fresh interpretations of Islam's most sacred text consonant with the principle of gender equality. Furthermore, gender-discriminatory rules and opinions in classical works of Islamic jurisprudence have come under careful scrutiny. Emphasizing the trajectory toward gender justice that is discernible in the Qur'an, feminist-minded Muslim scholars have argued that these rules and opinions reflect the patriarchal context in which they were formulated rather than the core message of the Qur'an (Wadud 1999; Mir-Hosseini 2003, 2015; al-Hibri and El Habti 2006; Hidayatullah 2014). A discussion of their views and arguments, however, goes beyond the scope of this study.

2. Some Preliminary Observations on Bābī Law

Although the Bāb's prophetic career was brief and spanned only six years, a deliberate graduality in the unfoldment and disclosure of his claims and laws is discernible. The Bāb himself has commented on this important theme in the *Dalā'il-i Sab'ih* (Seven Proofs), his most important polemical work, written in Persian in 1847:

Consider the manifold favors vouchsafed by the Promised One, and the effusions of His bounty which have pervaded the concourse of the followers of Islām to enable them to attain unto salvation. Indeed observe how He Who representeth the origin of creation, He Who is the Exponent of the verse, "I, in very truth, am God," identified Himself as the Gate [Bāb] for the advent of the promised Qā'im, a descendant of Muḥammad, and in His first Book enjoined the observance of the laws of the Qur'an, so that the people might not be seized with perturbation by

reason of a new Book and a new Revelation and might regard His Faith as similar to their own, perchance they would not turn away from the Truth and ignore the thing for which they had been called into being (The Bāb 2006, pp. 152–53)

The later works of the Bāb contain laws and ordinances that supersede those in his earlier works. The laws related to women and marriage in the Qayyūm al-Asmā' (Self-Subsisting Lord of All Names, a commentary on the Qur'anic *surah* of Joseph), the Bāb's first work written upon the declaration of his mission in 1844 and referred to in the passage quoted above, were basically a reiteration of corresponding Qur'anic laws (The Bāb n.d.e). Most notably, consonant with the Qur'anic precedent (Q. 4:3) that allowed a man to have up to four wives at any one time on the condition that he treated them equitably, the Qayyūm al-Asmā' (*surah* [chapter] 106) allowed the same number of wives. Similarly, with regard to inheritance, the Qayyūm al-Asmā' (ch. 106) upheld the distinction made in Qur'anic law between male and female inheritors, including the stipulation regarding the share of male offspring being twice that of females (Q. 4:11). These laws were later superseded. Another precept in the Qayyūm al-Asmā' (ch. 107) made marriage to "chaste virgins" (*al-muḥṣināt al-bākirāt*) conditional on their consent and the consent of their family. As will be explained below, the requirement of a virgin female's consent to marriage marked an expansion of her rights in comparison with certain Muslim legal opinions and cultural practices.

Most of the legal statements of the Bāb concerning women occur in the Persian Bayān (The Bāb n.d.b). Composed in 1847, this work is the chief repository of the laws of the Bābī religion. Unlike the Qayyūm al-Asmā', whose legal precepts mirror Qur'anic law, the Persian Bayān contains distinctive laws and injunctions that were intended to supersede Islamic laws. There is a parallel but far shorter text written in the same year called the Arabic Bayān. The Bāb did not complete either work. The Bayāns are organized according to the number 19—the numerical value of the name of God *Vāḥid* (unity). If completed, the Bayāns would have had 19 *vāḥids* (unities) of 19 *bābs* (chapters) each. The Persian Bayān contains up to chapter 10 of the ninth *vāḥid*. The Arabic Bayān contains 11 complete *vāḥids*. With the exception of the extra chapters in the Arabic Bayān, almost all its contents are found in the Persian Bayān.

The Persian Bayān is not solely or even primarily a legal document. It contains a large volume of doctrinal materials of a non-legal nature. Most notably, it is filled with references to, and anticipates the coming of, a future divine figure called *man yuzḥiruhu Allāh* (he whom God shall make manifest).¹ Thus, the primary objective of the Persian Bayān was to focus the attention of the Bābīs on the coming of *man yuzḥiruhu Allāh*. Hence, in one way or another, the Bāb links the laws of the Persian Bayān to the promised figure of his religion.

Legal statements in the Bayān are brief, leaving important aspects and details of the laws unexplained. It is clear that the Bāb's intention was not to devise an elaborate legal system. Rather, he seems more concerned with expounding on the spiritual, mystical and ethical dimensions of his laws. The Persian Bayān is also rich in the symbolism that characterizes so many of the Bāb's other texts. Many of its laws contain a symbolic dimension, including in their use of the number 19.

In addition to the Persian Bayān, several other works of the Bāb contain laws and injunctions regarding women and gender relations. None of his other works, however, gained as wide a circulation as the Persian Bayān. Due to its language, the latter work was more accessible to the rank-and-file Bābīs than those written in Arabic.

3. Marriage, Spousal Relations and Divorce

3.1. Prohibition of Mut'ah Marriage

In the context of the prevailing social practices in Iran and the wider Shi'i world, the most significant precept of the Bayān relevant to the status of women was the abolition of *mut'ah*, a temporary form of marriage only allowed in Twelver Shi'i Islam (Haeri 2006, 2014; Floor 2008, ch. 2; Madelung 1979; Tucker 2008, pp. 57–58).² In the section on marriage in the Persian Bayān (6:7), the Bāb briefly states that God, through his grace and favour, has abolished *inqiṭā'* (*mut'ah* marriage), so that no one would be subjected to abasement. *Mut'ah*

marriage was very common in Iran and Iraq in the nineteenth and early twentieth centuries, particularly in the Shi'ī shrine cities of Najaf, Karbala, Mashhad, and Qum as well as major stations along caravan routes. In Iran, *mut'ah* is also called *ṣighih*, a term which is also used in reference to the woman entering *mut'ah* marriage. Shi'ī jurists maintain the purpose of *mut'ah* to be sexual gratification. They thus distinguish it from permanent marriage, the objective of which is procreation.

In *mut'ah* marriage, the bride and groom agree to marry for a specified period of time, after which the marriage is automatically dissolved. The parties can renew the marriage. The groom also has the right to terminate it before the end of the term. The period may vary from as little as one hour to as long as 99 years. The fact that the term of the marriage can be very long provides a means to bypass the limit of four simultaneous wives set in Islamic law. Indeed, in addition to monarchs of the Qajar dynasty (1794–1925), who had many consorts, some Twelver Shi'ī men used the provision of *mut'ah* marriage to marry wives in excess of the four allowed in Islamic law.

The groom contracting *mut'ah* is required to pay a dowry to the bride, but she is generally not entitled to maintenance and will not inherit from her temporary husband if he dies before the end of the term of the marriage. In theory, a child born out of a *mut'ah* marriage is entitled to inheritance from the father—a feature that distinguishes *mut'ah* from legalized prostitution. In practice, however, it was often easy for fathers to deny paternity. In the case of thousands of *mut'ah* marriages that were contracted annually by men who were on pilgrimage to Shi'ī shrine cities or travelling by caravan, *ṣighihs* who became pregnant had no option but to terminate their pregnancy.

In the nineteenth and early twentieth centuries, poverty was the main factor responsible for the high prevalence of *mut'ah* marriage. Moreover, it served as an important source of income for the minor clergy, who charged a fee for officiating the marriage. Iranian households from upper social classes encouraged their sons to have *ṣighihs* in order to gain sexual experience before they married their future wives. The practice of *mut'ah* marriage must have been the main cause of the widespread prevalence of sexually transmitted diseases in nineteenth- and early twentieth-century Iran (Floor 2008, pp. 373–75, 405–6).

The position of the *ṣighihs* was very precarious. The majority effectively became prostitutes. In spite of the legality of *mut'ah* marriage, being a *ṣighih* or a child of a *ṣighih* marriage carried a stigma, even for the privileged ones who had kin that provided for them. The easy availability of *ṣighihs* also posed a threat to the status of wives and the institution of marriage. Husbands who were unhappy with their wives could be tempted to marry *ṣighihs*. For some men, it provided a way to satisfy sexual desires without care and commitment. The Bāb's stated reason for forbidding *mut'ah*, namely, that no one would be subjected to abasement, seems to be an allusion to these conditions.

Occasionally, *mut'ah* marriages were arranged for practical reasons as, for example, when a married woman wished to go on pilgrimage, but it was not possible for her husband or a male relative to accompany her. She would be divorced by her husband and become the *ṣighih* of another man, who would accompany her on her pilgrimage. After her return, the intermediate husband would divorce her, and she would remarry her original husband (Floor 2008, p. 162).

The majority of nineteenth- and early twentieth-century Muslim religious scholars and intellectuals who advocated for a reform of the status of women in Islamic societies hailed from Sunni Islam and were therefore not concerned about the issue of *mut'ah* marriage. In Iran, the modernizing state under the Pahlavis (1925–1979) introduced various reforms aimed at improving the position of women, but it took no measures to ban or curtail the practice of *mut'ah* marriage when it codified Shi'ī laws of marriage and divorce. Nonetheless, over the course of the twentieth century, the prevalence of *mut'ah* marriages declined, mostly because of a change in the attitude of the Iranian public. After the Islamic Revolution of 1979, however, *mut'ah* marriages became widespread again, with poverty and destitution being the main driving force. The authorities in the Islamic Republic of Iran have also promoted the practice, arguing that it is sanctioned by religion and serves as

a bulwark against illicit sexual relations. For traditional families, *mut'ah* serves as a means to control the sexual behaviour of their sons and daughters at a young age (Ahmady 2021).

3.2. Bigamy: Limiting the Plurality of Wives

The Bayān's prohibition of *mut'ah* marriages, which contributed significantly to the incidence of polygyny in Iran, was important for limiting the latter practice. Polygyny, however, is not discussed explicitly in either the Persian or the Arabic Bayān. Certain references and passages indicate, however, that a man might have more than one wife according to Bābī law. In the discussion of the division of inheritance in the Arabic Bayān (10:3), for example, the Bāb stipulates that the share of the wives of the deceased be divided equally between them. Similarly, the penalty prescribed in certain instances that make a man's wives unlawful to him—as, for example, in the Arabic Bayān, 7:18 and 10:18—points to the possibility of plurality of wives. As mentioned earlier, the Qayyūm al-Asmā' reiterated the Qur'anic sanction of a man having up to four wives on the condition that he treated them equitably. In his later writings, including a work called *Ṣaḥīfat al-Aḥkām* (Book of Ordinances), however, the Bāb expressly limited the maximum number of wives that a man might simultaneously have to two (F[arahvashī] n.d., p. 94). In connection with these other statements, a passage in the Persian Bayān (8:15) suggests the circumstances under which bigamy may occur: the couple's inability to produce offspring. It is not explicit, however, as to whether this is a requirement for the permissibility of bigamy. The passage in question identifies procreation as the purpose of marriage and notes that if a condition in either party prevents the couple from having a child, with that party's permission, the other may remarry in order to produce offspring. In the case of a man married to a barren wife, the text seems to imply that he may wed a second wife with her permission. In the case of an impotent husband, presumably the wife is permitted, with his approval, to divorce him and marry another man.

It was not before the latter part of the nineteenth century that Muslim intellectuals and others concerned about the rights of women in the Middle East and North Africa began to address the issue of polygyny. The Egyptian judge Qasim Amin (1863–1908), whose *Tahrīr al-Mar'a* (Liberation of Women, published in 1899) represented what was by then arguably the most multifaceted approach to reforming the status of Muslim women in the region, called for a restriction of the practice of polygyny. He considered the barrenness of the wife, however, as legitimate grounds for a husband to marry a second wife (Imārah 1989, pp. 325–26, 395; Amin 2004, pp. 8, 85). Similar views were expressed by Shaykh Muhammad Abduh (1849–1905), the Grand Mufti of Egypt and a major figure of Islamic modernism (Imārah 1993, vol. 2, p. 92). Neither of them, however, made the permissibility of a husband marrying a second wife conditional on the consent of the first wife.

Over the course of the twentieth century, most Muslim countries codified and promulgated Islamic laws of personal status governing marriage, divorce, custody of children, and inheritance. Turkey, however, adopted secular laws (the Swiss Civil Code of 1907 with minor alterations) and became the first Muslim country to ban polygamy (1926). Three decades later, as the first Arab country, Tunisia introduced a similar ban (1956). No other Muslim country in the Middle East and North Africa has to date abolished polygyny, but in the second half of the twentieth century, most attempted to restrict it by way of procedural devices, for example, by making a husband's second marriage conditional on the first wife's consent (Mallat 2007, ch. 10). It may be noted that polygyny, despite its criminalization in Turkish law, has continued to occur among certain segments of the population; the tension between secular state law and Islamic law has meant that the ban has not been fully enforced. In Iran, polygamy remains legal, but reliable statistics are not available not the least because many *mut'ah* marriages are not registered.

3.3. Bridal Consent

As was noted earlier, in the Qayyūm al-Asmā', the Bāb specifically mentioned that the consent of chaste virgin females was required for their marriage. In the Bayān, he

made marriage conditioned upon the consent of both spouses. In addition, the Bayān (6:7) required the payment of a dowry (by the groom to the bride) and the recitation of a specific verse indicating the couple's contentment with the will of God.³ The requirement of consent had implications for the practice of forced marriages involving girls. Muslim legal schools, both Sunni and Shi'i, unanimously gave the father the right to marry off his minor daughter to whomsoever he wished, even against her wish. Girls in their pre-puberty or below the age of nine were defined as minors.⁴

According to Twelver Shi'i and Shāfi'i jurists, in addition to the father, the paternal grandfather had authority to contract marriage on behalf of a minor ward. Jurists from the Ḥanafī school went even further and allowed other relatives of a minor girl to marry her off. Sexual relations, however, were not to begin until the bride had reached the age of majority. If the girl was married off by someone other than her father or paternal grandfather, she had the so-called "option of puberty" (*khiyār al-bulūgh*), that is, the option of having her marriage annulled upon pubescence (Yazbak 2002; Tucker 2008, p. 43; Baugh 2017, pp. 70–71, 199, 220–21). Shaykh Muḥammad Ḥasan al-Najafī (d. 1850), the prominent Shi'i legal scholar and contemporary of the Bāb, was explicit that a minor girl whose marriage was arranged by her father or paternal grandfather did not have the option of puberty (al-Najafī 1981, vol. 29, pp. 172–73).

According to Shāfi'i jurists, even a virgin in her legal majority could be married off without her consent (Tucker 2008, pp. 42–43; Spector 2010, pp. 67–69); in the case of a woman who had been married before, however, her consent was required for remarriage. Unlike the Shāfi'īs, jurists from other Sunni schools ruled that a virgin in her legal majority could not be married without her consent. This was also the dominant opinion among Shi'i jurists (al-Najafī 1981, vol. 29, pp. 174–75).

Minor sons could also be married off, but in practice, girls comprised the large majority of minors whose marriages were arranged. For Iran in the nineteenth and early twentieth centuries, we have reports of families arranging marriage for minor children, including daughters as young as four or five (Hejazi 2010, p. 176; Afary 2009, pp. 23–24), but we do not have an accurate picture of its prevalence.

Today, a minor is not considered capable of giving consent, and many countries, including Muslim-majority nations, have laws against marriage of minors. Moreover, there are generally provisions in national codes in Muslim countries that make the legality of marriage conditional on the consent of both spouses.⁵ Patriarchal cultural norms, economic issues and other factors, however, often interfere with and disrupt the implementation of laws dictating a minimum marriageable age and marital consent for girls. In Iran in the 1930s, laws were introduced that set a minimum marriage age for boys and girls, identified conditions for exemptions from the age restriction and prescribed penalties for the violators, but three decades later many females and males were still marrying before reaching the legal age, with girls outnumbering boys by about four to one according to some statistics (Momeni 1972, p. 546). In today's Iran, forced marriages are known to occur, though official statistics are not available (Moghadasi and Ameri 2017, pp. 189–91). Obviously, this is not unique to Iran. A national survey carried out in Pakistan in the 1990s found that 75 percent of the women respondents "had either not been consulted [about their marriage] or their opinion given no weightage at all" (Shaheed 1998, p. 71). Similarly, in India, "the consent of a girl to marriage is rarely sought" (Hussain 2005, p. 756). In Iraq, a 2005 report indicated that despite the legal ban on forced marriages and criminal penalties prescribed for violators, forced marriages of females occurred. The report also maintained that social mores, lack of easy access to and expense of courts and cumbersome procedures prevented women who were forced into marriage from having their marriages annulled (Welchman 2007, p. 69).

The adverse effects of forced marriages are greater on females than males (Women Living Under Muslim Laws 2006, p. 77). The practice also undermines the stability of marriage. In Saudi Arabia, in the mid-2000s, it was reported that about half of all marriages in the kingdom ended in divorce, and forced marriages were believed to be the main contributing

factor (Agencies 2005). Saudi Arabia has not codified Islamic laws of personal status; however, dominant opinion in classical Ḥanbalī law prevalent in the country permitted a female virgin to be married off without her consent (Almihdar 2008, p. 3). In April 2005, however, the Council of Senior Ulema (religious scholars), the country's highest religious authority, ruled that forcing a woman to marry against her will contravened Islamic law (Agencies 2005).

In view of the foregoing, the requirement of bridal consent stipulated by the Bāb in the Qayyūm al-Asmā' and later in the Bayān represented a significant departure from legal norms and social customs that were prevalent in parts of the Muslim world and have lingered to the present day.

3.4. Nullification of Tahlīl Marriage

The Persian Bayān (6:12) allowed a couple to remarry up to nineteen times after divorcing each other; once that number was reached, however, remarriage between the parties was no longer permissible. This rule addressed the Muslim practice of *tahlīl* marriage (also called *ḥalāla*), common to Sunnis and Shi'is alike, which seems to have occurred fairly frequently (Stowasser and Abul-Magd 2008, p. 38).⁶ *Tahlīl* refers to the practice of a man temporarily marrying a woman who has been thrice divorced by her former husband in order to render her lawful for remarriage to the first husband. *Tahlīl* also applies to a marriage between a man and a thrice-divorced woman which is not intended to be temporary, but which, in the event of divorce or the death of the second husband, would make the woman lawful to her original husband. According to both Sunni and Shi'ī jurists, for *tahlīl* to be effective, that is, render the thrice-divorced woman licit for remarriage to her first husband, the marriage to the intermediary husband, the *muḥallil*, had to be consummated (Stowasser and Abul-Magd 2008; Sectorsky 2010, pp. 105–6; al-Ṭabāṭabā'ī 1997, vol. 2, pp. 258–59).

Tahlīl is based on Qur'an 2:229–30. In order to discourage the pre-Islamic practice of husbands using divorce “to toy with their wives” (Tucker 2008, p. 112), the Qur'an made it unlawful for a man to remarry his wife once he had divorced her three times unless she was first married to another man and then divorced. Disregarding the original intention of the Qur'anic precept, many Muslim legal scholars considered a temporary *tahlīl* marriage valid, while a minority disapproved of it. Despite the differences in the positions of Muslim jurists, arranged *tahlīl* marriages occurred across the Muslim world, particularly in Sunni lands, not in the least owing to the validity, according to most Sunni jurists, of triple divorce—a form of divorce in which the husband pronounced the *ṭalāq* (divorce) formula thrice in a single session (Munir 2013; Tucker 2008, pp. 87–88; Sectorsky 2010, p. 107). The problem was to a great extent caused by the Sunni jurists' insistence that the divorce was effective and became irrevocable once the husband had uttered the formula of divorce thrice; most maintained that it did not matter if he had expressed this in a fit of rage and regretted his act afterwards. According to dominant opinion among Shi'ī jurists, triple divorce pronounced on one and the same occasion was illegal.

Muslim reformist thinkers were critical of *tahlīl* marriages. Writing in the late 1920s, al-Ṭāhir al-Ḥaddād (d. 1935), the Tunisian reformer and pioneering advocate for the liberation of women in his country, observed about “certain *muftīs* in Tunisia” and “the general population in Muslim countries” that they “regard it as a minor matter that a woman marries a new husband for a night or an hour and then divorces him in order to return to her original husband”. Marital altercations, he lamented, led husbands to pronounce the divorce formula repeatedly “in a sudden flurry of anger”, only to regret it later, but because the divorce was valid and irrevocable, they had to resort to “choosing a ‘one-night or two-night husband’”, so that their divorced wives could return to them (al-Ḥaddād et al. 2007, pp. 70, 71).

Today, modern personal status codes in Muslim countries generally do not discuss the issue of *tahlīl* in classical Islamic law, while traditional religious authorities emphasize the permanence of marriage and reject *tahlīl* as illegal. Nevertheless, *tahlīl* marriages continue to

occur and are even prevalent in parts of the Muslim world, indicating its tenacity (Stowasser and Abul-Magd 2008, p. 43; Tahsin Raha 2021). The Bāb, by permitting a couple to divorce and remarry up to nineteen times instead of the three marriages allowed under Islamic law, effectively nullified *tahlil* marriages—a practice that objectified women and was most humiliating to them.

3.5. Divorce

While some Muslim religious scholars considered divorce as an option to be used only out of necessity, classical Islamic law allowed a husband to divorce his wife at will by repudiation. Called *ṭalāq*, this was the most common form of divorce in Muslim lands. According to the Bayān (6:12), however, there had to be a compelling reason for divorce to be lawful.⁷ Moreover, the Persian Bayān prescribed for the husband and wife a waiting period of one year before divorce could be finalized, the intention being to give the parties a chance to reconcile. Islamic law also prescribed a waiting period called *‘iddah*, but it was much shorter and in practice applied almost exclusively to the wife. A main purpose of the *‘iddah* was to establish whether a woman was pregnant because of the marriage. Muslim jurists set the period of the *‘iddah* at three menstrual cycles for a menstruating woman and at three months for a woman who had passed through menopause. Should the woman be pregnant, the *‘iddah* was extended until the birth of the child.

A woman in her *‘iddah* was neither married nor free to remarry; she was entitled to maintenance but was not permitted to leave her husband’s house, unless she waived her rights to maintenance. A woman who left the house in defiance of these rules or changed residence without permission lost her rights to housing and any maintenance she might have (Tucker 2008, pp. 86–92, 100–3; Spector 2010, pp. 105–22).

The fact that Muslim jurists allowed husbands to divorce their wives at whim did not encourage them to be invested in the marital relationship. This also had a major impact on the prevalence of divorce. Although no statistics on divorce exist for the majority of the countries in the Middle East and North Africa in the nineteenth century, available evidence suggests that it was quite common (Fargues 2003, pp. 249, 256–57). Moreover, data for Iran from a later period suggest that men’s unrestricted access to divorce was the most important single factor responsible for its prevalence (Vatandoust 1985, p. 121; Aghajanian 1986, pp. 750–51; Zabihi-Moghaddam 2017, p. 139).

Divorce carried a stigma for the divorcee, but not for her husband. A Muslim man who divorced his wife was obligated to pay her the remainder of her dowry. In some cases, however, men shirked their obligation.⁸ Moreover, for the large majority of divorcees, the amounts they received upon divorce did not provide for financial security. Overall, divorce entailed much hardship for most women, while for men, it was largely a trivial matter.

Muslim reform-minded thinkers and others concerned about the rights of women in the late nineteenth and early twentieth centuries were critical of men’s frivolous attitude and abuse of their unfettered right to divorce (Tucker 2008, pp. 111–15; Amin 2004, pp. 95–98; al-Ḥaddād et al. 2007, pp. 72–76). Al-Ḥaddād, for example, denounced men who frequently married and divorced for sexual pleasure, “regarding women as dishes they [could] sample as they [wished]” (al-Ḥaddād et al. 2007, p. 76). He quoted an Islamic *ḥadīth* that condemned such behaviour but noted that nonetheless religious scholars and Muslim society condoned it.

Today, divorce is regulated in Muslim countries’ legal codes. While *ṭalāq* (divorce initiated by the husband) in classical Islamic law is an extra-judicial procedure, the codes in many countries require the involvement of courts in the process of *ṭalāq*. The provisions regarding the length of the waiting period for women who are being divorced generally follow the rules of *‘iddah* in classical Islamic jurisprudence (Tucker 2008, pp. 115–17; Welchman 2007, pp. 107–9, 122–25; Women Living Under Muslim Laws 2006, pp. 255–56, 301).

The Bayān does not comment on the financial obligations of the husband during the waiting period. As in other instances in the Bayān, the statements regarding divorce and the required waiting period are very brief and do not clarify the details of the law. By

making divorce conditional on the presence of a compelling reason and by extending the waiting period to one year, however, the Bayān placed important restrictions on men's access to divorce in comparison with rules in classical Islamic law.

3.6. Prohibition of Confining Wives

Various statements in the writings of the Bāb expressly deal with the ideal nature of the relationship between marriage partners. In the *Ṣaḥīfih-yi 'Adlīyyih* (Book on Justice), written in Persian in 1846, the Bāb advised the addressee to treat his wives (*nisā'*) in the most loving manner and not to hurt them even with an unfriendly look, indicating that even such a small act would be a deviation from God's command (*The Bāb n.d.f.*, p. 38). In the Persian Bayān (6:12), the Bāb noted that once two people had been united in marriage, their relationship was to be characterized by mutual affection (*maḥabbat*). Although the Qur'an (30:21) spoke of tranquillity, affection and mercy between marriage partners, Muslim juridical texts placed emphasis on purely legal and sexual aspects of the relationship. The husband, according to the jurists, through payment of dowry and provision of maintenance to his wife, had gained the right to exclusive and unrestricted access to her body, and the wife could not deny him that right. The view of early jurists that "the husband's dominion over his wife, or rather over her sexuality" was "the crucial defining characteristic of Islamic marriage" (Ali 2010, p. 184) had hardly changed by the time of the Bāb.

The statements by the Bāb cited above, emphasizing the importance of love in marriage, addressed the juristic conception that stressed a husband's dominance over his wife. In addition, certain precepts and injunctions in the Persian and Arabic Bayān seem to be tacit responses to misogynist rulings and opinions found in Muslim jurisprudential texts. Some of the statements in *vāḥid* 7, chapter 18, constitute one such example. They prohibit an individual from confining another. It is stated in regard to one who confines another that his wives would become unlawful to him, that he would incur a penalty if he approached his wives, and that he would not be counted as a believer. The Persian Bayān (7:18) further states that a child conceived under such circumstances would be illegitimate, while the Arabic Bayān (7:18) prescribes the banishment of the person in question if a child is conceived.⁹ The same section of the Persian Bayān also deals with the issue of causing sadness to another. The Bāb writes the following:

... in the Bayān there is no act of obedience that ensureth greater nearness to God than bringing joy to the hearts of the faithful, even as naught yieldeth more remoteness than causing them grief. This law is doubly binding in dealing with the possessors of circles (women), whether in causing them joy or grief (Saiedi 2008, p. 322).¹⁰

The Bayān does not expressly state that the prohibition on an individual confining another applies to a husband and wife. Considering the above statements in connection with legal opinions in Islamic jurisprudential texts that allowed a man to confine his wife at home, however, leads one to infer that the Bāb was at least partly, if not primarily, addressing those misogynist opinions.

As noted above, Muslim jurists maintained that once the marriage had been contracted and the wife had received the prompt portion of her dowry, she was obligated to remain sexually available to her husband. To ensure a husband's unrestricted access to his wife, the jurists ruled that she could not leave the marital domicile without his permission. This action would constitute an instance of wifely *nushūz* (rebellion or disobedience), which entitled the husband to impose certain sanctions against her, including physical chastisement (Chaudhry 2015). A husband, it was openly acknowledged, was allowed to confine his wife to the marital home. As explained by al-Marghīnānī (d. 1197), the author of *al-Hidāya* (The Guide), one of the most authoritative jurisprudential texts of the Ḥanafī school, the official legal school of the Ottoman empire, "a husband's right to confine his wife at home is solely for the sake of securing to himself the enjoyment of her person" (al-Marghīnānī 1870, p. 54; Tucker 2008, p. 53). Legal scholars of later ages expressed

similar opinions. In his book *Radd al-muḥtār ‘alā al-durr al-mukhtār* (Guiding the Baffled to The Exquisite Pearl), Ibn-i ‘Ābidīn (d. 1836), another prominent Ḥanafī jurist and a contemporary of the Bāb, confirmed a husband’s right and authority to confine his wife at home (Cuno 2015, pp. 87, 240). In the passage in the Bayān cited above, the Bāb indicated that if a person confined another, his wives would become unlawful to him. Muslim jurists had ruled that a husband had a right to confine his wife at home to ensure sexual access to her. According to the law in the Bayān, however, such an act would render his wife unlawful to him, thus negating the very rationale for Muslim jurists’ ruling.

3.7. Prohibition of Marital Rape

In the *Kitāb al-Jazā’* written in the last years of his life (between 1847 and 1850), the Bāb made a comment concerning husbands’ treatment of their wives that stood in sharp contrast to opinions advanced in Islamic juridical texts. Addressing his male followers, he wrote that it would never ever be lawful for them to approach their wives (i.e., have intercourse with them) except by their permission (The Bāb n.d.c).¹¹ Ḥanafī jurists expressly stated that a husband had a right to force his wife to have sex with him (Chaudhry 2015, pp. 79, 104–5; Ali 2010, p. 120). Jurists from other schools did not explicitly authorize husbands to have intercourse with their wives without their consent. All of them, however, considered marital rape “an oxymoron”; to them, “rape (*ighṭisāb*) [was] a property crime that by definition [could] not be committed by the husband” (Ali 2010, p. 120).

It must be noted that the classical Islamic view expressed most explicitly by Ḥanafī jurists was by no means unique to the Muslim world. While Jewish authorities since the time of the Talmud had ruled that a husband could not coerce his wife to have sex with him (Biale 1995, pp. 142, 252–54), the legal approach to marital rape in English common law was similar to the position of Muslim jurists. The prominent English legal scholar Sir Matthew Hale (d. 1676), in his best-known work that was published sixty years after his death, had made the following argument: “But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract” (Hale 1736, vol. 1, p. 629). Western legal thought on this subject changed only slowly. The Bāb’s statement cited above was an ethical injunction. He did not specify any legal consequences for husbands who disregarded that injunction. His position, however, was a strong rejection of the Islamic juridical opinion that asserted a husband’s conjugal rights above the rights of his wife and permitted spousal rape.

4. Concluding Remarks

The Bāb’s statements briefly reviewed in this study reveal a deliberate attempt to reform certain aspects of the prevailing legal and ethical norms affecting the status of women in Iran and the wider Muslim world. His laws and injunctions clearly pointed to a new vision of gender relations. The challenge that that vision posed to existing norms was most forcefully thrust at the community of his followers and the wider public in 1848, when Ṭāhirih appeared unveiled before a group of Bābī men assembled at the hamlet of Badasht in northern Iran. While her bold act caused an uproar that reverberated across Iran, the Bāb’s statements discussed above and similar others that may exist in his vast body of works remained largely unnoticed. Recently, however, we have begun to discern their significance, in the historical context in which they were put forth, for the rights of women, including in marital relations—an issue that not only had tangible consequences for the wellbeing of wives, but had broader implications, affecting women’s position in society. The process that the Bāb began was continued in the Bahā’ī Faith, with its founder Bahā’u’llāh proclaiming the equality of women and men as a fundamental teaching of his religion.

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Notes

- ¹ Bahā'īs consider Bahā'u'llāh to be the promised *man yuzhiruhu Allāh*.
- ² Twelver Shi'ī law also allows for a form of *mut'ah* marriage that in theory does not involve sexual relations between the partners.
- ³ The Persian Bayān also refers to the presence of witnesses from among the relatives of the parties if there be any. There is no mention of witnesses in the Arabic Bayān.
- ⁴ Nine lunar years, corresponding to about eight years and nine months on the solar calendar.
- ⁵ In some cases, the relevant laws were introduced fairly recently. While Malaysia's Islamic Family Law (Federal Territories) Act 1984 required the consent of both parties to the marriage, the states of Kelantan, Kedah and Malacca, in accordance with the opinion in the Shāfi'ī school, had until the 2000s laws that allowed a virgin female to be married off by her father or paternal grandfather without her consent (Mohd and Kadir 2020, p. 54).
- ⁶ For a document regarding a *taḥlīl* marriage in nineteenth-century Iran, see Ittīḥādīyyih et al. (2006, vol. 2, pp. 396–97); Afary (2009, pp. 39–40).
- ⁷ The Bāb uses the word *idṭirār* (“imperative necessity” or “compulsion”) and its derivatives in the Persian and Arabic Bayān.
- ⁸ According to al-Ḥaddād, in rural areas of Tunisia, men even demanded the reimbursement of the dowry that they had paid to their ex-wives (al-Ḥaddād et al. 2007, p. 69).
- ⁹ See also the Bāb's Lawḥ-i Haykal al-Dīn (Tablet of the Temple of the Faith) (The Bāb n.d.d).
- ¹⁰ Provisional translation.
- ¹¹ The double emphasis is in the original and is conveyed by *lan* (“never”) and *abad^{an}* (“ever”).

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