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The Existential Perspective on 'God's Bestowal of *Faḍl* upon Men' and Its Implications on *Qiwāma*

With the migration of the Prophet to Medina and the increase in the number of his followers, it became necessary to introduce societal regulations and devotional practices to facilitate the moral, spiritual, and rational growth of individuals and the community of believers. The societal regulations were initially provided by verses of the Qur'an and the accompanying oral Prophetic exegeses.[2] These regulations were revealed in response to questions asked to the Prophet or contextual circumstances that required instructions. An example of such a regulation was the bond of brotherhood between non-consanguine Meccan migrants and their Medinan hosts, which allowed for mutual inheritance between them.[3] The majority of these regulations were not original but modifications of existing norms and practices formulated with a sense of fairness and the goal of limiting abuse as much as possible within the given context.[4]

These regulations appealed to the people of that time as being more egalitarian and pragmatic, which are important markers of regulations in any time and place. Regulations and stipulations governing gender-specific societal roles, spousal relations, rights, and responsibilities were supplied during the last ten years of the Prophet's life

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2 For reference to the Qur'an as the initial and main source of societal regulations, see Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 2004), 10–13; Knut S. Vikør, *Between God and the Sultan: A History of Islamic Law* (London: Hurst and Company, 2005), 20; Joseph Schact, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1982), 10–14. For reference to the Prophet's exegeses of the Qur'an as a source of normativity, see Q.16:44; and M. Mustafa Al-Azami, *On Schacht's Origins of Muhammadan Jurisprudence* (Cambridge: Islamic Texts Society, 1996), 13.

3 For reference to the creation of the bond of brotherhood, see Martin Lings, *Muhammad: His Life Based on the Earliest Sources* (Cambridge: Islamic Texts Society, 2019), 128; Fazlur Rahman, *Islam* (Chicago: The University of Chicago Press, 2002), 19. For reference to the abrogation of the norm of mutual inheritance, see Q. 8:75; and Faḍl b. Ḥasan al-Ṭabarsī, *Majmaʿ al-bayān fī tafsīr al-Qur'ān* (Beirut: Mu'assasat al-Aʿlamī li-l-Maṭbūʿāt, 1995), 4:500.

4 See Coulson, *A History of Islamic Law*, 13–14; and Schact, *An Introduction to Islamic Law*, 10–14.

in Medina. While not exhaustive and not covering every eventuality, their phraseology yields fundamental principles for understanding these roles and responsibilities, and the associated issues in different contexts.

Sharīʿa regulations and stipulations that enshrine societal gender roles and spousal relations, rights, and responsibilities, as espoused by the Qur'an and the Prophet, were not perceived to be unfair, prejudicial, or discriminatory by the primary audience. They remained optimal in facilitating the functioning and growth of Muslim communities for the duration of the pre-modern era and may still be effective in similar existential contexts in the contemporary world. However, these same regulations and stipulations may be considered inegalitarian and regressive in contemporary contexts where notions of inalienable human rights and human dignity are part of the mindset and worldview of their communities.[5] This has led to various discourses on the conflict between Sharīʿa regulations and stipulations of the revelatory era and human rights and the notion of human dignity.

The basis of this conflict is the assumption that all Sharīʿa regulations and stipulations of the revelatory era are the intended regulations and stipulations of God for all times and places, which is premised on a fixed and static ontology. However, this conflict dissipates with the understanding of an ontology of flux and dynamism, for all such regulations and stipulations are recognised as 'Sharīʿa' regulations that were formulated in and for the contexts of the revelatory era and other similar contexts only.[6]

This paper embarks upon a comprehensive exploration of the multifaceted notions pertaining to *qiwāma* (governorship), *daraja* (degree), and *infāq* (provision) in conjunction with *faḍl* (existential merit). By means of the following analysis, I endeavour to elucidate that *faḍl* is far from being an immutable or universal phenomenon. Instead,

5 See Vikør, *Between God and the Sultan*, 20–21. For reference to the Qur'an and the Prophet modifying pre-Islamic norms and praxis, see Coulson, *A History of Islamic Law*, 14–18.

6 For reference to the verses of the Qur'an having general or universal principles, see Abdullah Saeed, *Interpreting the Qur'ān: Towards a Contemporary Approach* (Abingdon: Routledge, 2006), 24, 127–28. The following quote is pertinent: 'It is often argued that the *sharīʿa* was not given in a finished form. The Prophet's method was a flexible dynamic adaptation of general principles to specific situations as they arose … after the death of the Prophet Muhammad in 632 AD, his first four successors carried on the tradition of flexibility. They believed that laws had to be understood and interpreted to remain true to their purpose. During their time, laws were continually developed, and the successors to their secular authority were fully empowered to preside over and guide that process. Under Umayyad rule, the law became more rigid as it was employed by the rulers as a theoretical justification for state control. It was then that the religious scholars collected and organised the various rulings of the Prophet and his first successors and created a legal system – from which all four Sunnī schools of law emerged and the main collections of the Prophet's sayings, *hadith*, were compiled." Munira Fakhro, 'Gulf Women and Islamic Law', in *Feminism and Islam: Legal and Literary Perspectives*, ed. Mai Yamani (Berkshire: Ithaca Press, 1997), 251.

it undergoes modifications commensurate with the changing existential aptitudes of both individuals and groups. My contention is that these fluctuations in *faḍl* bear significant ramifications for gender roles within societies. For instance, designating men as governors based solely on their presumed superiority resulting from God's bestowal of *faḍl* becomes problematic when one takes into account the mutability intrinsic to such concepts. As women advance in developing their own skills and abilities at a pace equivalent – if not exceeding – those traditionally assigned only to men under *qiwāma* principles, societal expectations regarding gender must change. In summary, this paper demonstrates the following:

1. The Sharīʿa regulations and stipulations of the revelatory era governing societal gender roles and spousal relations, rights, and responsibilities were formulated in accordance with God's bestowal of existential merit upon men and women of the revelatory era.
2. The notion of God's bestowal of existential merit signifies the existential aptitudes He bestows upon individuals, collectivities, or genders in any given time and place.
3. The existential aptitudes of individuals, collectivities, or genders are subject to change with the growth of humankind.
4. Therefore, the Sharīʿa regulations and stipulations of the revelatory era governing said roles and responsibilities, which were formulated in accordance with the existential aptitudes of the people of that era, are neither universal nor eternal.
5. These roles and responsibilities enshrined in the Sharīʿa regulations and stipulations of the revelatory era are mutable and ought to be subjected to periodic appraisals.

By analysing the relevant verses of the Qurʾan, it becomes clear that the notion of *qiwāma* (governorship) was a status (*ʿunwān*/*iʿtibār sharʿī*) assigned to men (a) to acknowledge the legitimacy of societal positions that were male specific in that context, and (b) to designate men as responsible for 'providing for the spouse' (*infāq*), whereby they became eligible for certain rights exclusively within the familial domain. Thus, if the notion of 'God's bestowal of *faḍl* (existential merit)' upon one individual, collectivity, or gender at the exclusion of others is subject to change in accordance with the growth of the existential aptitudes of these groups, it follows that assigning 'the status of *qiwāma*' and consigning the responsibility of 'providing for the spouse and dependants (*infāq*)' to men exclusively is mutable and subject to change. The implications of this are that societal gender roles and spousal relations, rights, and responsibilities are also mutable and subject to change.

In traditional Islamic scholarship, the discourse on marriage and its related notions of (a) 'men being a degree (*daraja*) above women', (b) 'God's bestowal of *faḍl* (existential merit) upon men', (c) 'the assignment of the status of *qiwāma* (governorship) to men', and (d) 'men's provision of the spouse (*infāq*)' is not one in which Muslim

scholars differ sectarianly. Accordingly, there is no reason to differentiate the analyses of such issues in terms of whether scholars are Sunnī or Shīʿī. Thus, this paper presents the views of Muslim scholars on marriage and its related notions without distinguishing Shīʿī scholars from Sunnī and vice versa.

THE TRADITIONAL UNDERSTANDING

As a Muslim theologian or jurist, it is important to understand Q. 4:34 and 2:228, which use the concepts of 'men being a degree (*daraja*) above women', 'God's bestowal of *faḍl* (existential merit) upon men', 'the assignment of the status of *qiwāma* (governorship) to men', and 'men's *infāq* (provision) of the spouse' in the context of spousal relations, rights, and responsibilities. These concepts are fundamental to the understanding of spousal relations and gender roles in traditional Islamic jurisprudence (*fiqh*).

While there is a time gap between the revelations of these verses, they are examined together because Q. 2:228 uses the concept of 'men being a degree (*daraja*) above women' in the sense of 'the assignment of the status of *qiwāma* to men', and Q. 4:34 employs this concept along with the others more clearly. The exact relationship between the concepts of 'the assignment of the status of *qiwāma* (governorship) to men', 'God's bestowal of *faḍl* (existential merit) upon men', and 'men's *infāq* (provision) of the spouse' is unclear, and traditional scholarship offers different views on the nature of this connection.[7]

Q. 4:34 uses a verbal derivative of the adjectival noun *qiwāma* and the verbal nouns *faḍl* and *infāq* as follows:

> Men are the governors (*qawwāmūna*) of women because of God granting merit (*faḍḍala*) to some over others and because of what they expend (*anfaqū*) of their wealth. Righteous women are devotedly obedient and protective of the unseen because of what God has entrusted them with. But those [of your women that] you sense ill-conduct from, counsel them, and [if they persist] do not share their beds, and [if they persist still] beat/discipline them.

The immediate cause of the revelation of this verse is that a man had beaten his wife on account of her disobedience. There are slight variations in the exegetical works regarding the names of the people concerned. According to some narrations,

7 This can be gleaned from the discussions in the chapters on marriage in works of 'discursive jurisprudence' (*fiqh istidlālī*). See also Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (New York: Oxford University Press, 1999), 68–74; Asma Barlas, *"Believing Women" in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin: University of Texas Press, 2004), 184–87; Najila Hamadeh, 'Islamic Family Legislation: The Authoritarian Discourse of Silence', in Yamani, *Feminism and Islam*, 342–43.

the woman is said to have been Ḥabība bt. Zayd b. Kharija b. Abī Zuhayr, the wife of Saʿd b. Rabīʿ. Her father, Zayd, took her to the Prophet and lodged a complaint against Saʿd. The Prophet said that Ḥabība ought to invoke her right of retaliation (*qiṣāṣ*) against Saʿd. As they were leaving, the Prophet called them back and explained that the archangel Gabriel had just revealed the aforementioned verse (Q. 4:34). After citing the verse, he stated, 'We intended an affair but God intended otherwise.'[8] Therefore, in light of this context (which is its immediate cause), this verse instructs that men have the right to discipline their wives without any consequence on account of their being 'assigned the status of *qiwāma* (governorship)'.

Although the notions of 'the assignment of the status of *qiwāma* (governorship) to men', 'God's bestowal of *faḍl* (existential merit) upon men', and 'men's *infāq* (provision) of the spouse' in this verse appear to be interconnected, the exact relationship between them is unclear. Hence, traditional scholarship offers several views on the nature of the connection between them. For instance, (a) al-Ṭabarī states that 'men's *infāq* of the spouse' is due to 'God's bestowal of *faḍl* upon men' and not women;[9] (b) al-Ṭanṭāwī maintains that 'men's *infāq* of the spouse', defending them, governing their affairs, and disciplining them, is due to 'the assignment of the status of *qiwāma* to men';[10] (c) al-Ṭabāṭabāʾī states that 'the assignment of the status of *qiwāma* to men' is due to 'God's bestowal of *faḍl* upon men' and not women, but omits to mention the relationship of the notion of 'men's *infāq* of the spouse' to the notions of 'assigning the

8 For reference to the narrations, see the exegeses of al-Ṭabarsī, *Majmaʿ al-bayān*, 3:79; Muḥammad Sayyid al-Ṭanṭāwī, *al-Tafsīr al-wasīṭ li-l-Qurʾān al-karīm* (Cairo: Maṭbaʿat al-Saʿāda, 1983), 3:176; Ismāʿīl Ibn Kathīr, *Tafsīr al-Qurʾān al-ʿaẓīm* (Beirut: Dār wa-Maktabat al-Hilāl, 1990), 2:70. It is worth noting that the Prophet's immediate response prior to the revelation of Q. 4:34 discloses that he regarded Saʿd's physical castigation of his wife, Ḥabība, to be criminal. Hence, he advised her to retaliate or seek assistance in retaliating. Yet, the Qurʾan's intervention is indicative of its awareness that instituting such a regulation – albeit fair, just, and egalitarian – would have been premature in and for that context, for it risked mass opposition, ridicule, and ultimately rejection of its essential teachings. See Asma Lamrabet, *Women in the Qurʾan: An Emancipatory Reading*, trans. Myriam Francois-Cerrah (Markfield: Square View, 2019), 153–55. In terms of the existential notions of 'form' and 'essence', the Prophet's response is more akin to the 'essence' of the regulation, whereas the Qurʾan's intervention is a 'form', that is, a contextual rendering of the 'essence'. For more information on the notions of 'form' and 'essence' in the domains of regulations (*aḥkām*) and jurisprudence (*fiqh*), see Arif Abdul Hussain, 'The Existential Perspective on the Meaning and Implication of the Impure Substances within Shīʿī Jurisprudential Discourse', in *The Regulations of Purity and Impurity in Islam: Proceedings of the 8th AMI Contemporary Fiqhī Issues Workshop, 2–3 July, 2020*, ed. Hashim Bata (Birmingham: AMI Press, 2022), 81–84.

9 See Muḥammad b. Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī min kitābihi Jāmiʿ al-bayān ʿan taʾwīl āy al-Qurʾān* (Beirut: Muʾassasat al-Risāla, 1994), 2:451.

10 See al-Ṭanṭāwī, *al-Tafsīr al-wasīṭ*, 3:176–78.

status of *qiwāma* to men' and 'God's bestowal of *faḍl* upon men';[11] (d) al-Saʿdī infers that 'the assignment of the status of *qiwāma* to men' is due to 'men's *infāq* of the spouse' and protection, which in turn is due to 'God's bestowal of *faḍl* upon men' and not women;[12] and finally, (e) al-Khūʾī asserts that 'the assignment of the status of *qiwāma* to men' is due to 'God's bestowal of *faḍl* upon men' and 'men's *infāq* of the spouse'.[13]

Traditional scholarship has different ideas about the relationship between 'the assignment of the status of *qiwāma* to men', 'God's bestowal of *faḍl* upon men', and 'men's *infāq* of the spouse'. There are five main views:

1. Men's *infāq* of the spouse depends only on God's bestowal of *faḍl* upon men.
2. Men's *infāq* of the spouse depends only on the assignment of the status of *qiwāma* to men.
3. The assignment of the status of *qiwāma* to men depends only on God's bestowal of *faḍl* upon them.
4. The assignment of the status of *qiwāma* to men depends on men's *infāq* of the spouse, which in turn depends only on God's bestowal of *faḍl* upon them.
5. The assignment of the status of *qiwāma* to men depends on both God's bestowal of *faḍl* upon men and men's *infāq* of the spouse.

The fifth reading (*ẓāhir al-kalām*) of the verse, which is al-Khūʾī's view, is in my opinion the most clear and obvious interpretation of the verse.

THE NOTION OF 'THE ASSIGNMENT OF THE STATUS OF *QIWĀMA* TO MEN'

The superlative verbal adjective *qawwām* (pl. *qawwāmūna*) is derived from the Arabic root letters *qāf-wāw-mīm*. It has several meanings among which are 'manager', 'keeper', 'custodian', and 'guardian'.[14] This is the dictionary meaning of the word *qawwām* agreed upon by both Shīʿī and Sunnī exegetes. For instance, Ibn Kathīr states, 'the qualification *qawwāmūna* implies that a man is her chief, has authority over her, and disciplines her

11 See Muḥammad Ḥusayn al-Ṭabāṭabāʾī, *al-Mīzān fī tafsīr al-Qurʾān* (Qom: Manshūrāt Jamāʿat al-Mudarrisīn fī al-Ḥawza al-ʿIlmiyya fī Qum, n.d.), 4:343. For a critique of this view, see note 51.

12 See ʿAbd al-Raḥmān al-Saʿdī, *Taysīr al-Karīm al-Raḥmān fī tafsīr al-Kalām al-Mannān* (Riyadh: Dār al-Salām li-l-Nashr wa-l-Tawzīʿ, 2002), 190.

13 See Abū al-Qāsim al-Khūʾī, [response to the *fatwā* question] 'What is meant by governorship (*qiwāma*) in the Almighty's words "Men are the governors (*qawwāmūna*) of women", and why is it that men are the governors of women and not vice versa, knowing that sometimes, the woman is the one responsible for the affairs of the house?' [in Arabic], Imam Al-Khoei Benevolent Foundation, www.al-khoei.us/fatawa2/?id=727.

14 See Hans Wehr, *Arabic-English Dictionary*, ed. J. Milton Cowan (Urbana: Spoken Language Services, 1994), 936.

when she strays'; and al-Qurṭubī adds that it entails defending the woman and providing for her (*infāq*).[15] In light of this, the English word 'governorship' – which in Arabic is *qiwāma* – best encapsulates these nuances and variations of the term *qawwām*.[16]

The imperative in Q. 4:34 instructing men to discipline their respective women in a measured manner on account of their ill-conduct (i.e. to reprimand initially, followed by abstention from intimacy, and finally to castigate physically) is based on the notion and understanding that men are the 'governors' (*qawwāmūna*) of women. Thus, the verse affords men the right to discipline their respective women on account of their being 'governors'. It is not a command that has to be carried out; rather, it is akin to the unilateral right to divorce at will accorded to men vis-à-vis their wives in the traditional understanding of the nature of the marriage contract.[17] It should be noted that there is no record of the Imāms castigating their respective spouses physically when the latter had engaged in ill-conduct, but rather they divorced them.[18] That being said, a man can choose to continue to be married to a spouse who has performed such behaviour and in so doing he retains the right to castigate her physically.

Being afforded the right to discipline their spouses in the verse implies that *qiwāma* (governorship) is a status assigned to men deliberately, that is, it is not an arbitrary designation. Furthermore, men are assigned this status because of their roles as protectors and providers of their spouses and other dependants within the existential context of the revelatory era.

Q. 2:228 is situated among verses enunciating the rules of divorce and reconciliation. It states:

> Divorced women must wait for three menstrual cycles [before marrying again]. If they believe in God and the Day of Judgement, it is not lawful for them to hide what God has created in their wombs. During their waiting period, their husbands have the right to resume marital relations if they want reconciliation, and they [i.e. women] have similar [rights] as those [that men have] upon them, in accordance with ethical practice (*bi-l-maʿruf*); but men are a degree (*daraja*) above them [i.e. women, vis-à-vis spousal rights and responsibilities]. God is Mighty and Wise.[19]

15 See Ibn Kathīr, *Tafsīr al-Qurʾān al-ʿaẓīm*, 2:70–71; Muḥammad b. Aḥmad al-Qurṭubī, *al-Jāmiʿ li-aḥkām al-Qurʾān* (Beirut: Muʾassasat al-Risāla, 2006), 6:278–81.

16 See Wehr, *Arabic-English Dictionary*, 936.

17 This is assuming the marriage contract is the standard one, wherein no proviso has been stipulated curtailing men's unilateral right to divorce at will. For rules on additional stipulations in the marriage contract, see ʿAlī Ḥusaynī al-Sīstānī, *Minhāj al-ṣāliḥīn* (Beirut: Dār al-Muʾarrikh al-ʿArabī, 2013), 3:101–2.

18 For instance, see narration no. 1 regarding the divorce of the fifth Imām in the following reference: Muḥammad b. Yaʿqūb al-Kulaynī, *Furūʿ al-Kāfī* (Beirut: Manshūrāt al-Fajr, 2007), 6:36.

19 Note that the phrase *bi-l-maʿrūf* in this verse means 'in accordance with ethical practice'; see

The verse alludes to the rights and responsibilities of women prior to concluding that 'men are a degree (*daraja*) above them'. The exact meaning of the notion of 'men being a degree above women' in the context of this verse is unclear: are men 'a degree above' women in relation to rights and responsibilities only, or are they 'a degree above' them existentially, that is, due to something pertaining to them qua men, whereby they have greater rights and responsibilities? The fact that the pronoun 'them' in the phrase 'a degree above them' refers to 'women' and not 'rights and responsibilities', in spite of the pronoun's position in the verse being posterior to the clause mentioning female rights and responsibilities, suggests that it refers to an existential state by virtue of which men have greater rights and responsibilities. It can be argued that this meaning is corroborated by a previous clause in the verse asserting that men have the *unilateral* right to resume marital relations with their divorced wives during the waiting period of three menstrual cycles (thereby rescinding the divorce).[20]

Exegetical commentaries on the significance of the notion of 'men being a degree (*daraja*) above women' can be categorised as follows:[21]

1. It signifies the superiority of men vis-à-vis elevation and leadership, and having more in terms of 'increase' (*ziyāda*) and rights; examples of 'increase' are the share of inheritance and blood money, and an example of 'more' rights is the unilateral right to divorce.
2. It signifies that men are superior existentially, that is, physically, morally, and rationally.
3. It signifies the superiority of men by virtue of which men have greater and more responsibilities than women, such as defending women and the obligations of participating in *jihād* (warfare), paying the *mahr* (dower), and 'providing for the spouse and dependants (*infāq*)'.

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al-Ṭabāṭabā'ī, *al-Mīzān*, 2:232. For a detailed discussion on this meaning of the term and its implications, see A. Kevin Reinhart, 'What We Know about *Maʿrūf*', *Journal of Islamic Ethics* 1, no. 1–2 (2017): 51–82.

20 Note that the man has the unilateral right to resume marital relations only if the divorce is revocable. Also, several exegeses of Q. 2:228 quote the following statement attributed to the Prophet to corroborate the notion of 'men being a degree (*daraja*) above women': 'Had prostrating to human beings been permissible, then wives would have been commanded to prostrate before their husbands.' For instance, see al-Qurṭubī, *al-Jāmiʿ li-aḥkām*, 4:54. For reference to the narration, see Abū Dāwūd Sulaymān al-Sijistānī, *English Translation of Sunan Abī Dāwūd*, trans. Yasir Qadhi (Riyadh: Maktabat Dār al-Salām, 2008), 549–50.

21 For instance, see al-Ṭabarī, *Tafsīr al-Ṭabarī*, 2:32–33; Muḥammad b. Ḥasan al-Ṭūsī, *al-Tibyān fī tafsīr al-Qur'ān* (Qom: Mu'assasat al-Nashr al-Islāmī, 1996), 2:241; al-Ṭabarsī, *Majmaʿ al-bayān*, 2:100–101; Ibn Kathīr, *Tafsīr al-Qur'ān al-ʿaẓīm*, 1:394; al-Qurṭubī, *al-Jāmiʿ li-aḥkām*, 4:53–54; al-Ṭabāṭabā'ī, *al-Mīzān*, 2:232–33, 260–77; al-Ṭanṭāwī, *al-Tafsīr al-wasīṭ*, 1:667–69; al-Saʿdī, *Taysīr al-Karīm al-Raḥmān*, 102. Note that the deliberations of exegetes fall into one or more of the categories; often they list all three. For more details of these views on the notion of 'men being a degree (*daraja*) above women', see Ragà El-Nimr, 'Women in Islamic Law', in Yamani, *Feminism and Islam*, 93–94.

Therefore, the notion of 'men being a degree (*daraja*) above women' in the context of this verse is either (a) equivalent in meaning to the notion of 'God's bestowal of *faḍl* (existential merit) upon men' in Q. 4:34, that is, it refers to an existential feature or state in men lacking in women, or (b) it signifies that 'men' have been assigned as 'being a degree (*daraja*) above women' with respect to rights and responsibilities, and hence is akin to the assignment of a status.

According to al-Ṭabāṭabā'ī, the notion of 'men being a degree (*daraja*) above women' is expressed in the context of rights and responsibilities; it signifies that men have a Sharī'a-assigned status that their spouses do not.[22] For al-Ṭabāṭabā'ī, this assignment is due to 'God's bestowal of *faḍl* (existential merit) upon men' and not women.[23] To reiterate, men are assigned superior societal roles and greater spousal rights and responsibilities because 'men' have been assigned as 'being a degree above women', which in turn is due to 'God's bestowal of *faḍl* upon them'. Al-Ṭanṭāwī concurs with this view in his *al-Tafsīr al-wasīṭ*; he states it is due to the assignment of 'men being a degree above women' that men are given greater and more rights and responsibilities.[24] Undoubtedly, this view is a legitimate and compelling interpretation. This is because the notion of 'men being a degree above women' in this verse can be read as an assignment of a status granting greater rights and responsibilities, especially in light of the context of the clause prior to it, which is the reciprocity of rights and responsibilities between men and women. In view of this, then, the notion of 'men being a degree above women' is not equivalent to the notion of 'God's bestowal of existential merit (*faḍl*) upon men' and not women.

Neither al-Ṭabāṭabā'ī nor al-Ṭanṭāwī mentions the correspondence between the notions of 'the assignment of the status of *qiwāma* (governorship) to men' and 'men being a degree (*daraja*) above women' in Q. 4:34 and 2:228, respectively.[25] Nevertheless, both are akin to one another. This is because neither notion denotes any single right or responsibility, or a specific set of rights or responsibilities; rather, each signifies the assignment of a status to men on account of 'God's bestowal of *faḍl* upon men' whereupon they are afforded additional rights and responsibilities. Therefore, the notion of 'men being a degree (*daraja*) above women' in Q. 2:228 assigns 'men' the status of 'being a degree above women' in relation to rights and responsibilities.[26]

22 See al-Ṭabāṭabā'ī, *al-Mīzān*, 2:232, 268–77.

23 Ibid., 268–77, 4:343. Note that al-Ṭabāṭabā'ī mentions the word *fiṭra* (existential nature) instead of *faḍl* (existential merit) in his exegesis of Q. 2:228, but it amounts to the same, for the existential nature of things is bestowed by God.

24 See al-Ṭanṭāwī, *al-Tafsīr al-wasīṭ*, 1:667–69.

25 Refer to the references in the previous three notes.

26 Note that equating the notion of 'men being a degree (*daraja*) above women' to the notion of 'God's bestowal of *faḍl* (existential merit) upon men' results in the following absurdities: either

THE FUNCTIONALITY OF THE NOTION OF 'THE ASSIGNMENT OF THE STATUS OF *QIWĀMA* TO MEN'

Based on the exegetical literature of Q. 4:34 and 2:228 and the jurisprudential delineation of gender roles, there are two domains in which the notion of 'the assignment of the status of *qiwāma* (governorship) to men' is pivotal in determining gender roles:

1. Gender roles in society generally.
2. Gender roles in marriage, that is, spousal relations, rights, and responsibilities.

In the societal domain, prophethood, kingship, and leadership generally are considered male prerogatives exclusively.[27] This is because 'men are a degree (*daraja*) above women', and hence have 'increase' (*ziyāda*) and the ability to lead.[28] In jurisprudence (*fiqh*), it is argued (on the basis of Q. 4:34 and 2:228, and other textual evidences from the Qur'an and *ḥadīth* literature) that men are best suited to govern (*ḥukūma*), rule (*riyāsa*), and hold positions of leadership and authority in any given society, and hence men alone should occupy all such societal positions and offices. This includes the office of the supreme religious authority who is to be emulated and referred to (*marjaʿ*), judgeship (*qāḍī*), and the leader of prayers (*imām*).[29] Women are considered homemakers, and hence are expected to attend to household affairs.[30]

In the marital domain, men are afforded more rights and responsibilities than women (based on Q. 4:34 and 2:228, and other textual evidences from the Qur'an and *ḥadīth* literature), such as the unilateral right to coitus at will, the right to castigate

(i) that the notion of 'God's bestowal of *faḍl* upon men' signifies the assignment of a status, like the notion of 'men being a degree above women', whereby men are to be afforded greater rights and responsibilities; this would mean it is simultaneously the cause of and equivalent to the notion of 'the assignment of the status of *qiwāma* (governorship) to men', and hence it is the cause of itself; or (ii) it would prompt a more fundamental question of what confers men with the status of 'God's bestowal of *faḍl*'.

27 See Ibn Kathīr, *Tafsīr al-Qur'ān al-ʿaẓīm*, 2:70.

28 Ibid. Ibn Kathīr references the notion of 'men being a degree (*daraja*) above women' in Q. 2:228 in his exposition of Q. 4:34. See also al-Ṭabarsī, *Majmaʿ al-bayān*, 3:79.

29 See al-Khū'ī, 'What is meant by governorship (*qiwāma*)?'. For al-Khū'ī's views on societal gender roles vis-à-vis women, see his *Book of Juristic Reasoning and Emulation* [in Arabic], Shia Online Library, 226, https://tinyurl.com/2p8udx3a; and *Path of Salvation* [in Arabic], Shia Online Library, 2:370, https://tinyurl.com/yp3nyvw3. Note that a few traditional scholars have issued verdicts permitting women to assume societal and religious roles of leadership either explicitly or implicitly. For instance, see Muḥammad Ḥusayn Faḍlallāh, 'Islam's Position on Women Assuming Judgeship' [in Arabic], Bayyināt, 20 January 2021, http://arabic.bayynat.org.lb/ArticlePage.aspx?id=30543; and the opinion of Yūsuf al-Sāniʿī in which he does not mention 'maleness' as a condition for being a legist (*mujtahid*): Yūsuf al-Sāniʿī, *Miṣbāḥ al-muqallidīn* (Qom: Manshūrāt Fiqh al-Thaqalayn, n.d.), 20. For a critique of the universality of the notions in Q. 4:34, see note 51.

30 See al-Khū'ī, 'What is meant by governorship (*qiwāma*)?'.

their spouses physically on account of ill-conduct, and the right to prevent their spouses leaving the house for non-essential matters. Juxtaposed to the extra rights and responsibilities afforded to men is the right of women to be fed, clothed, and maintained in general within reason, that is, in accordance with the economic status of their husbands.[31]

THE NATURE OF 'GOD'S BESTOWAL OF *FAḌL* UPON MEN'

The word *faḍl* is the verbal noun of the verb *faḍala*. Its meanings include 'excellence', 'superiority', 'better', 'merit', and 'increase'.[32] Scholars agree that God has bestowed some additional merit upon men that he has not to women.[33] The following questions arise: What is this 'merit' (*faḍl* – intrinsic in the verb *faḍḍala* in Q. 4:34)? What does the word 'merit' refer to? Is it something that men are bestowed with arbitrarily by God, that is, has God ordained the bestowal of additional merit upon men without any existential basis? Or does the word 'merit' refer to the existential aptitudes and capacities of men that are greater than those of women? Aside from the exegetical commentary of al-Saʿdī, exegetes concur that the notion of 'God's bestowal of *faḍl* upon men' refers to an existential feature or state of men lacking in women. Based on the utility of the word *maʿrūf* in the clause of Q. 2:228 (immediately preceding the clause 'men are a degree (*daraja*) above them') – 'and they [i.e. women] have similar [rights] as those [that men have] upon them in accordance with ethical practice (*bi-l-maʿrūf*)' – al-Saʿdī asserts that the reciprocal rights of men and women are determined in accordance with the moral conventions of the time. He then explains the notion of 'men being a degree (*daraja*) above women' as denoting 'elevation', 'leadership', and 'increase' (*ziyāda*) with respect to rights and responsibilities, and cites Q. 4:34 implying that the notions of 'the assignment of the status of *qiwāma* (governorship) to men' and 'God's bestowal of existential aptitudes (*faḍl*) upon men' are defined as per convention.[34] Yet he also states that 'the assignment of the status of *qiwāma* to men' and 'God's bestowal of *faḍl* upon men' are the reasons why the offices of prophethood, judgeship, and imamate, and other positions of societal leadership and authority,

31 See al-Ṭabarsī, *Majmaʿ al-bayān*, 2:100. See also *masʾala* (issue) no. 420 in al-Sīstānī, *Minhāj al-ṣāliḥīn*, 3:125.

32 See Wehr, *Arabic-English Dictionary*, 840.

33 See al-Ṭabarī, *Tafsīr al-Ṭabarī*, 2:451; Ibn Kathīr, *Tafsīr al-Qurʾān al-ʿaẓīm*, 2:70–71; al-Ṭabāṭabāʾī, *al-Mīzān*, 4:343–44; al-Ṭabarsī, *Majmaʿ al-bayān*, 3:79; al-Ṭanṭāwī, *al-Tafsīr al-wasīṭ*, 3:176–78; al-Saʿdī, *Taysīr al-Karīm al-Raḥmān*, 190.

34 See al-Saʿdī, *Taysīr al-Karīm al-Raḥmān*, 102. Pages 2–3 explain why the term *faḍl* in the notion of 'God's bestowal of *faḍl* upon men' can be translated as 'existential aptitudes'.

are restricted to men.[35] Hence, his exegetical work is unclear as to whether confining such offices and positions to men is because of their superior existential aptitudes or the conventions of the time.[36]

As stated above, traditional scholarship generally considers the notion of 'God's bestowal of *faḍl* upon men' to be referring to the superior physical and mental capacities that men are endowed with existentially. Scholars have expressed this in their discussions on the meaning of the notion of 'men being a *daraja* (degree) above women' vis-à-vis rights and responsibilities, often citing verse of the Qur'an employing the notion of 'God's bestowal of *faḍl* upon men'. For instance, Ibn Kathīr comments that the notion of 'men being a degree above women' signifies the superiority and excellence of men over women in how they have been created both in this world and the hereafter, citing Q. 4:34 (in which the notions of 'the assignment of the status of *qiwāma* to men' and 'God's bestowal of *faḍl* upon men' are employed) to supplement his claim;[37] al-Baghawī asserts that the distinguishing feature in men rendering them 'a degree above women' is the faculty of reason (*ʿaql*), for it is deficient in the latter;[38] al-Ṭanṭāwī states that the notion of 'men being a degree above women' refers to the fact that 'ability' generally is greater in the former than the latter as evinced by Q. 4:34 (in which the notions of 'the assignment of the status of *qiwāma* to men' and 'God's bestowal of *faḍl* upon men' are employed);[39] and al-Ṭabāṭabā'ī interprets the notion of 'God's bestowal of *faḍl* upon men' directly asserting that it denotes 'extra merit' bestowed upon men at the exclusion of women by virtue of the former's nature; this 'extra merit' is the faculty of reason (which is deficient in women) and everything contingent upon it, such as 'understanding' and 'physical strength' – both of which are necessary to undertake difficult tasks; in contrast, the life of women is marked by emotions and sentiments on account of their tender disposition.[40]

In conclusion, the notion of 'God's bestowal of *faḍl* (existential merit) upon men' is analysed in traditional scholarship either directly or as part of the deliberations on

35 Ibid.

36 The question of 'the foundations of human societal conventions' is pertinent here. According to the existential framework, societal conventions are appreciations of existence albeit locally, and hence rational at the point of the formulation of the conventions. For more information, see n63 in Arif Abdul Hussain, 'The Primacy of the Freedoms of Thought and Expression within the Existential Framework: Implications of Sharīʿa Regulations, Rights and Freedom', Shaykh Arif (blog), 10 January 2023, www.shaykharif.com/blog/freedom-of-thought?categoryId=24615. See also al-Ṭabāṭabā'ī, *al-Mīzān*, 2:232, 268–77.

37 Ibn Kathīr, *Tafsīr al-Qur'ān al-ʿaẓīm*, 1:394.

38 See Ḥusayn b. Masʿūd al-Baghawī, *Tafsīr al-Baghawī: maʿālim al-tanzīl* (Riyadh: Dār Ṭayba, 1989), 1:269.

39 See al-Ṭanṭāwī, *al-Tafsīr al-wasīṭ*, 1:668–69.

40 See al-Ṭabāṭabā'ī, *al-Mīzān*, 4:343.

the notion of 'men being a degree (*daraja*) above women', and it refers to the rational, moral, and physical merit bestowed upon men and not women. The next section discusses the remit of the notion of 'God's bestowal of *faḍl* upon men' exclusively and its impact on gender rights.

THE REMIT OF 'GOD'S BESTOWAL OF *FAḌL* UPON MEN' AND IMPLICATIONS ON GENDER RIGHTS

The traditional view is that the disparity between the genders is existential, that is, it is part of the existential make-up of the man and woman intended by the Creator. Hence, the disparity is rooted in maleness and femaleness fundamentally, manifesting as the different physical and psychological constitutions of men and women.[41] One consequence of His decision is that it has allayed the possibility of gender competition with respect to societal, familial, and spousal roles, rights, and responsibilities.[42]

Traditional scholars delineate gender differences in their analyses of verse 3:36 of the Qur'an in which the mother of Lady Mary implores God thus: '"My Lord, I have given birth to her, a daughter." And Allah knew best of what she has given birth to. "And the male is unlike the female."' They include (a) physical difference, where the superior physique of the man enables him to engage in *jihād* and 'provide for the spouse and dependants (*infāq*)'; (b) procreative difference, where the body of the woman is endowed with the ability to gestate and give birth; and (c) dispositional difference, where the existential state of the woman is softness, emotionality, impulsiveness, interacting impetuously at times in a childlike manner without proper assessment of the situation, and the existential state of the man is hardness, rationality, measuredness, interacting in situations with due diligence after thinking and understanding.[43] Scholars also offer such deliberations in their interpretations of the notions of (i) 'men being a *daraja* (degree) above women'(vis-à-vis rights and responsibilities) in Q. 2:228, (ii) 'the assignment of the status of *qiwāma* (governorship) to men', and (iii) 'God's bestowal of *faḍl* (existential merit) upon men' in Q. 4:34.[44] It should be noted that al-Ṭabāṭabā'ī concurs with the traditional view of the physical, procreative, and dispositional differences between the genders; however, he considers the source of the differences to be the notion of 'God's bestowal of *faḍl* upon men' and not God's assignment of 'men' as being 'a degree (*daraja*) above women'. As stated previously,

41 See *The Container of the Interpretation of the Noble Qur'an* [in Arabic], The Call of Faith: The Site of All Muslims, 1850, https://tinyurl.com/36n2urth.

42 Ibid.

43 Ibid.

44 See the references of exegeses of Q. 2:228 and 4:34 mentioned in notes 22–24 and 34.

he asserts that the notion of 'God's bestowal of *faḍl* upon men' signifies additional merit and excellence with respect to physique, morality, and rationality.[45]

Irrespective of which notion is the metaphysical reason for these physical, procreative, and dispositional differences between the genders, both the notions of 'men being a degree (*daraja*) above women' and 'God's bestowal of *faḍl* (existential merit) upon men' are fundamental in the formulation of societal gender roles, spousal relations, rights, and responsibilities, and the differences therein, in all Muslim collectivities since the revelatory era.[46] For instance, al-Ṭabāṭabā'ī states in his commentary of the following clauses of Q. 2:228, 'and they [i.e. women] have similar [rights] as those [that men have] upon them, in accordance with ethical practice (*bi-l-maʿruf*); but men are a degree (*daraja*) above them [i.e. women, vis-à-vis spousal rights and responsibilities]', that rights and responsibilities are not accorded to each gender equally; rather, they are conferred to each in accordance with their respective aptitudes. Hence, rights and responsibilities are afforded to each gender equitably.[47]

It should be noted that scholars such as al-Ṭanṭāwī contend that although '*faḍl* (existential merit) is bestowed upon men' with regards to physique, morality, and rationality, there can be exceptions, such as occasions or relationships in which the women concerned are rationally more astute than men.[48] This presupposes that 'God's bestowal of *faḍl* upon men' is existential, and hence subject to flux and growth. Interestingly, the contemporary thinker Muhammad Shahrur asserts that the causality between the notions in Q. 4:34 qualifies the unrestrictedness (*iṭlāq*) of the terms *al-rijāl* and *al-nisā'*, which means that 'the status of *qiwāma* (governorship)' is assigned to either men or women on a case-by-case basis effectively.[49] Thus, not only was the notion of 'God's bestowal of *faḍl* upon men' not universal, but 'God's bestowal of *faḍl*' in itself was never an existential feature or state conferred to men qua 'men'; it was an existential feature or state conferred to men qua 'individuals', and hence to women qua 'individuals' too theoretically.

In conclusion, despite admitting to the possibility of occasions and instances in which the notion of 'God's bestowal of *faḍl* (existential merit) upon men' exclusively is contravened and hence the contrary is true (i.e. occasions and instances in which 'God has bestowed *faḍl* upon women' and not men), traditional scholarship gen-

45 See al-Ṭabāṭabā'ī, *al-Mīzān*, 2:275, 4:343.

46 See *The Container of the Interpretation of the Noble Qur'an*, 1850; and the references of exegeses of Q. 2:228 and 4:34 mentioned in notes 22–24 and 34.

47 See al-Ṭabāṭabā'ī, *al-Mīzān*, 2:274.

48 See al-Ṭanṭāwī, *al-Tafsīr al-wasīṭ*, 3:177.

49 See Muḥammad Shaḥrūr, *al-Kitāb wa-l-Qur'ān: qirā'a muʿāṣira* (Damascus: al-Ahālī li-l-Ṭibāʿa, 1990), 619–21. For a very brief overview of Shahruh's academic project, see Fakhro, 'Gulf Women and Islamic Law', 253–54.

erally upholds the position that societal gender roles and spousal relations, rights, and responsibilities delineated by the Sharīʿa of the revelatory era are formulated on the basis of universally generalisable differences between men and women, and not individual aptitudes and diversity. In other words, traditional scholarship maintains that 'God's bestowal of *faḍl* upon men' is an existential state or feature of men qua 'men', resulting in differences between the genders, and hence such roles and responsibilities as delineated and assigned by the Sharīʿa are universal.[50] There are a few scholars, such as Shahrur, who do not consider 'God's bestowal of *faḍl* upon men' to be an existential state or feature of men qua 'men', but of men qua 'individuals', and hence of women qua 'individuals' too potentially. For Shahrur, then, Muslim scholarship must interpret societal gender roles and spousal relations, rights, and responsibilities for every context.

THE IMPACT OF THE UNQUALIFIED NOTIONS OF 'GOD'S BESTOWAL OF *FAḌL* UPON MEN' AND 'THE ASSIGNMENT OF THE STATUS OF *QIWĀMA* TO MEN' ON SOCIETAL GENDER ROLES

According to al-Ṭabāṭabā'ī, since Q. 4:34 employs the notion of 'God's bestowal of *faḍl* (existential merit) upon men' in an unrestricted sense, and since 'the assignment of the status of *qiwāma* (governorship) to men' is contingent upon it, then it too is unrestricted. This means that men's status of being governors (*qawwāmūna*) over women is universal. Thus, 'the assignment of the status of *qiwāma* to men', and hence its functionality, is not restricted to the familial or marital domains, but is absolute, embracing all aspects of life; it is an unrestricted, universal, and a generalisable feature of men qua 'men'.[51] Consequently, prophets and rulers have always been men.[52]

50 Note that a minority of scholars in traditional Islamic scholarship reject the universality of the notions in Q. 4:34. See note 51 and also the views of Ḥusayn ʿAlī al-Muntaẓirī and ʿAbd al-Hādī al-Faḍlī, 'On Women's Guardianship' [in Arabic], Islam4u, https://tinyurl.com/5e2j6vzx.

51 See al-Ṭabāṭabā'ī, *al-Mīzān*, 4:343–44. Note that Ḥusayn ʿAlī al-Muntaẓirī rejects the unrestrictedness of the notion of 'the assignment of the status of *qiwāma* (governorship) to men' in Q. 4:34. He argues that the context of the verse is the marital relationship, and hence its application is restricted to the marital domain. In view of this, he distinguishes the notion of *qiwāma* in Q. 4:34 from the notion of *qaymūma* (societal governance and administration) – the former notion being restricted to the marital domain and signifying the assignment of the responsibility of (a) attending to the welfare of women and (b) organising their affairs to men. See al-Muntaẓirī and al-Faḍlī, 'On Women's Guardianship'. For information on the implications of an unrestricted understanding of the notions in Q. 4:34, see Hamadeh, 'Islamic Family Legislation', 342–43.

52 See Ibn Kathīr, *Tafsīr al-Qur'ān al-ʿaẓīm*, 2:70; al-Ṭanṭāwī, *al-Tafsīr al-wasīṭ*, 3:177; al-Saʿdī, *Taysīr al-Karīm al-Raḥmān*, 102, 190. It should be noted that the vast majority of the prophets of God are unknown, hence the possibility that female prophetesses of God were sent to some col-

In the domain of jurisprudence (*fiqh*), al-Khū'ī states that the male half of the human species is more capable than the female both physically and rationally. Jurisprudentially, the basis for his assertion is the unrestricted (*iṭlāq*) usage of the term *qawwāmūna* (governors) in Q. 4:34. He speculates that such unrestricted usage may be the reason why women are prevented from occupying positions in the judiciary (*qaḍā'*) specifically or positions of societal authority (*wilāya*) and governance generally.[53] In his deliberations, al-Khū'ī does not cite the connection between the notions of 'the assignment of the status of *qiwāma* to men' and 'God's bestowal of *faḍl* upon men' explicitly;[54] however, traditional scholarship generally regards regulations specific to men, and norms privileging them over women, as being premised on 'the assignment of the status of *qiwāma* to men' on account of 'God's bestowal of *faḍl* upon men'. Examples include (a) obligations specific to men, such as the obligation to participate in *jihād* and 'provide for the spouse and dependants (*infāq*)', (b) the suitability of men to occupy offices of societal governance and positions of leadership only, and (c) regulations and stipulations allocating 'more' or 'increase' (*ziyāda*) to men in comparison to women, such as regulations granting men the unilateral right to divorce and stipulating greater shares of inheritance and higher blood ransom for men.[55]

With regards to spousal relations, rights, and responsibilities privileging men qua 'husbands', the unrestrictedness (*iṭlāq*) of the notion of 'the assignment of the status of *qiwāma* to men' qua 'husbands' is presupposed; however, it seems to be contingent upon the notion of 'men's *infāq* (provision) of the spouse': 'Men are the governors (*qawwāmūna*) of women because of God granting merit (*faḍḍala*) to some over others and because of what they expend (*anfaqū*) of their wealth' (Q. 4:34).

However, this prompts the question of what impels men to 'provide for their spouses (*infāq*)' if men's responsibility of '*infāq* of their spouses' is not the effect of 'the assignment of the status of *qiwāma* to men', which itself is caused by 'God's bestowal of *faḍl* upon them'.

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lectivities cannot be ruled out. Furthermore, some of the women mentioned in the Qur'an received revelation, inspiration, and conversed with angels, hence they qualify as prophetesses depending on how the notion of 'a prophet of God' is defined. In fact, the Old Testament, or the Hebrew Bible, affirms that prophetesses of God were sent to some collectivities. See Jonathan Stökl, 'Female Prophets in the Ancient Near East', in *Prophecy and Prophets in Ancient Israel: Proceedings of the Oxford Old Testament Seminar*, ed. John Day (New York: T & T Clark, 2010), 47–61.

53 See notes 29 and 30 for references.

54 Ibid.

55 For instance, see al-Ṭabarī, *Tafsīr al-Ṭabarī*, 2:32–33; al-Baghawī, *Tafsīr al-Baghawī*; 1:269, 2:207; al-Ṭanṭāwī, *Aa-Tafsīr al-wasīṭ*, 1:668–69, 3:176–78; al-Sa'dī, *Taysīr al-Karīm al-Raḥmān*, 102, 190.

The word *infāq* is a verbal noun of the verb *anfaqa*. Its meanings include 'providing' and 'expending'.[56] These are the senses in which Q. 4:34 employs the notion. In jurisprudence (*fiqh*), the notion of *infāq* signifies 'providing maintenance to dependants', which includes the wife for she is assumed to be the man's dependant upon ratification of the marriage contract. From the jurisprudential literature, it can be extrapolated that the notion of 'the assignment of the status of *qiwāma* to men' is essential in determining the nature of the marriage contract in the Sharīʿa, and that upon ratification of the marriage contract, a man becomes responsible for 'the *infāq* (provision) of his spouse'.[57] Thus, the notion of 'men's *infāq* of the spouse' is the effect of the notion of 'the assignment of the status of *qiwāma* to men' within the marital set-up. This means it is employed in Q. 4:34 to merely justify 'the assignment of the status of *qiwāma* to men' from the viewpoint of the effect – 'men's *infāq* of the spouse'. In other words, since the verse wants to justify designating men as the governors (*qawwāmūna*) of women, it offers (a) the metaphysical reason or cause (which is 'God's bestowal of *faḍl* upon men') for the designation and (b) something that men already do for their spouses indicating that they are already playing the role that the verse formally wants to designate to them.

Thus, 'the assignment of the status of *qiwāma* to men' is a retroactive assignment, and hence 'men's *infāq* of the spouse' is neither an independent factor alongside the notion of 'God's bestowal of *faḍl* upon men', nor a cause of 'the assignment of the status of *qiwāma* to men'. Rather, it is 'God's bestowal of *faḍl* upon men' that is the cause for designating men as the governors (*qawwāmūna*) of women in the marital domain, which in turn is the reason why they 'provide for their spouses (*infāq*)' and are obligated to do so. That being said, it is appropriate to introduce here that essentially and existentially the notion of 'the *ability* to provide for dependants' is fundamental in 'the assignment of the status of *qiwāma* to men' and hence in determining the degree of rights and responsibilities afforded to each spouse. Thus, the notion of 'the *ability* to provide for dependants' must be connected to 'God's bestowal of *faḍl* upon men'.

56 See Wehr, *Arabic-English Dictionary*, 1158.

57 The issue of the nature of the marriage contract, that is, the definition of the marriage contract, was clearly understood in the pre-modern era. This is because spousal relations, rights, and responsibilities were premised on the view that women were subordinate to men. In the contemporary world, the division of the genders on the basis of the superiority/inferiority dichotomy has gradually dissolved. Hence, there is a need for traditional Islamic scholarship to revisit the old definition of the marriage contract, identify its assumptions, discern whether they are congruent with existential aptitudes of people today, and reformulate it if necessary.

THE EXISTENTIAL READING OF THE NOTION OF 'GOD'S BESTOWAL OF *FAḌL* UPON MEN' AND ITS IMPLICATIONS ON THE NOTION OF 'THE ASSIGNMENT OF THE STATUS OF *QIWĀMA* TO MEN'

According to the existential framework, all things are dynamic and in a state of growth as per Ṣadrā's notion of substantive motion. This dynamism means that all things are in a constant state of flux actualising their inherent potential in an evolutionary manner, for all things are imbued with the *telos* of growth. This includes the human soul – it actualises its innate rational, moral, and spiritual potentialities gradually in an evolutionary manner.[58] Hence, the purpose of the societal regulative formulations of the Sharīʿa of the revelatory era was to assist the growth of the existential aptitudes of the people of that time and place, and as such, they are merely rational, contextual, and optimal rules or interpretations formulated in light of the existential aptitudes of the people of that time and place.[59] This means the Sharīʿa regulative system of the revelatory era has a foundation and is not arbitrary. *ʿAdliyya* jurists (*uṣūliyyūn*) agree with the non-arbitrariness of Sharīʿa regulative formulations inasmuch as the relations of things to humans have inherent values that are rationally discernible.[60] However, they have failed to fully appreciate the functionality of the faculty of reason in the domain of norms and regulations. This includes its capacity to (i) assent to norms and regulations that are growth-promoting and optimal in facilitating the growth of the existential aptitudes of the individual and collectivity of a particular existential context, (ii) critique those that are not growth-promoting or suboptimal in facilitating the growth of the existential aptitudes of a given collectivity and its individuals, and (iii) reformulate them so that they are growth-promoting and optimal in facilitating the growth of the existential aptitudes of the people of a given existential context.[61]

58 See Abdul Hussain, 'The Primacy of the Freedoms of Thought and Expression', 14–16.

59 See ibid., 23–24; and Abdul Hussain, 'The Existential Perspective', 81–84. For the notion of 'Sharīʿa regulations being evolutionary', see El-Nimr, 'Women in Islamic Law', 88.

60 See Abdul Hussain, 'The Primacy of the Freedoms of Thought and Expression', 23; Arif Abdul Hussain, 'The Conflict between the Actual and Apparent Regulations – Part 1: The Theoretical Foundations of Uṣūl al-Fiqh and the Uṣūlī Resolutions', Shaykh Arif (blog), www.shaykharif.com/blog/the-conflict-between-the-actual-and-apparent-regulations?categoryId=24615, 1–4. The term *ʿadliyya* refers to the Shīʿī Imāmī school of theology and jurisprudence (*uṣūl al-fiqh*) due to the tenet of 'the justice of God' being the defining feature distinguishing it from other schools.

61 For information on the faculty of reason, its functions, and its interplay with the faculty of intuition, see Abdul Hussain, 'The Primacy of the Freedoms of Thought and Expression', 26–33; and Arif Abdul Hussain, *Islam and God-Centricity: Plurality and Mutability of Religion* (Birmingham: Sajjadiyya Press, 2022), 139–46.

Although it is accepted in the science of the principles of jurisprudence (*ʿilm uṣūl al-fiqh*) that Sharīʿa regulations are rational and the faculty of reason can formulate societal regulations in principle, its remit of operation is restricted largely to the extrapolation of supplementary regulations of text-based Sharīʿa regulations.[62] The general attitude of jurists (*uṣūliyyūn*) and legists (*fuqahāʾ*) regarding Sharīʿa regulations is one of finality and universality.[63] Occasionally, legists do challenge these regulations by appealing to the principle of justice and contextual change; but generally, it is only in extenuating circumstances that text-based Sharīʿa regulations, termed 'primary regulations' (*aḥkām awwaliyya*), can be superseded by other regulations, termed 'secondary regulations' (*aḥkām thānawiyya*).[64]

If it can be acknowledged that the role of the faculty of reason is to constantly assess existential aptitudes which are dynamic, in a constant state of growth and hence subject to change, it is easier to comprehend that Sharīʿa regulations are essentially rational, contextual, and optimal rules or interpretations formulated on the basis, and for the growth, of the existential aptitudes of the people of a particular existential context. Based on this understanding, it becomes clear that existing Sharīʿa regulations do not need to be reinterpreted at all, but rather the existential aptitudes of the people in any given context today need to be appreciated directly and then regulations that are just and growth-promoting need to be formulated accordingly. *ʿAdliyya* jurists obviously concur that Sharīʿa regulations by definition must be congruent with the principle of justice, which postulates that everything ought to be given its rightful place. However, they have not factored that both things and humans are in a constant state of flux, which means the relations between things and humans are not stable and fixed, and hence regulations formulated and issued on the basis of those relations are subject to change. In view of this, the existential understanding of justice is to give everything its rightful due in accordance with its existential aptitude – which is subject to growth – in any given time and place.[65] This means that all regulative systems, irrespective of whether they are religious or secular, are fallible in essence. Thus, regulations are to be (a) formulated and (b) constantly scrutinised, in terms of optimality and efficacy in facilitating the growth of the existential aptitudes of the people in any given time and place.

62 See Muḥammad Ṣanqūr ʿAlī, *al-Muʿjam al-uṣūlī* (Qom: Dār al-Mujtabā, 2001), 785, 865–68; Muḥammad Riḍā Muẓaffar, *Uṣūl al-fiqh* (Qom: Intishārāt Ismāʿīliyyāt, 2004), 2:206–10, 3:105–12.

63 The aim of the legist (*faqīh*) is to procure regulations as they are in 'the mind of God', that is, the actual regulations (*al-aḥkām al-wāqiʿiyya*); hence, they are assumed to be universal and immutable. See Abdul Hussain, 'The Conflict between the Actual and Apparent Regulations – Part 1', 1–9.

64 See Ṣanqūr ʿAlī, *al-Muʿjam al-uṣūlī*, 529–30, 531–32.

65 See Abdul Hussain, 'The Primacy of the Freedoms of Thought and Expression', 20; Abdul Hussain, *Islam and God-Centricity*, xi, 60, 120, 143–44.

The principle of justice is fundamental in the formulation of societal regulations generally, which is to give all things their rightful due in accordance with the existential aptitudes of the people of a particular time and place. This means the Sharīʿa regulations and stipulations of the revelatory era regarding societal gender roles and spousal relations, rights, and responsibilities were formulated in accordance with the principle of justice – that is, in accordance with the existential aptitudes of the people of the revelatory era – with the aim of creating a moral society conducive to the rational and spiritual growth of people. However, since Sharīʿa regulations and stipulations vis-à-vis societal gender roles and spousal relations, rights, and responsibilities are not congruent with the existential aptitudes of men and women today, they have lost their optimality in facilitating growth and hence are viewed as being unjust. Consequently, the formulation of new regulations and stipulations is necessary. Note that it is no longer sufficient in many instances to tweak existing Sharīʿa regulations and stipulations of the revelatory era apropos societal gender roles and spousal relations, rights, and responsibilities; rather, it is necessary to discern the status of existential aptitudes afresh via the faculty of reason and then to afford rights and responsibilities to members of the collectivity justly.

Therefore, the notion of 'God's bestowal of existential aptitudes (*faḍl*) to men' and not women in Q. 4:34 is not absolutely and universally true, but it denotes a relative (or contextual) and a local truth. This means it is not proclaiming an unchangeable existential feature and state of men whereby only they qualify for 'the assignment of the status of *qiwāma*', and hence only they can occupy the offices of societal governance and positions of leadership, and only they are to be afforded more rights and responsibilities in marriage – examples include judgeship, rulership, religious leadership, double share of inheritance, greater testimonial credibility, responsibility of *'infāq* (provision) of the spouse and dependants and paying the *mahr* (dower), the unilateral right to divorce at will, the unilateral right to coitus at will, and the right to castigate their wives physically.

The notion of 'God's bestowal of existential aptitudes (*faḍl*) to men' and not women is neither absolute nor universal existentially, that is, it is not true of all people, collectivities, and contexts outside of the revelatory era. In many collectivities and contexts today, it is patently inaccurate to assert that men are innately endowed with superior physique and faculties of reason, and hence are more capable of 'providing for the family (*infāq*)' and leading the collectivity than women. There is not a single field of human intellectual endeavour in which women are not on par with men. Contemporary commerce is not contingent upon hard manual labour but mental skills. Indeed, female heads of states have been as effective as men in governing their countries, if not better in some instances.

In view of these deliberations and this understanding of the notion of 'God's bestowal of existential aptitudes (*faḍl*) to men' in Q. 4:34, the following is the existential understanding of Q. 2:228: both husbands and wives have rights and responsibilities

according to their respective roles in marriage; this is because the verse states that men 'are a degree (*daraja*) above' women with respect to rights and responsibilities, and assumes that the disparity in the allocation of rights and responsibilities to each is equitable and just – based on the fact that the clause 'men are a degree (*daraja*) above them (women)' is preceded immediately by the phrase 'in accordance with ethical practice' (*bi-l-maʿruf*); this 'justness' assumed *vis-à-vis* the disparity in the allocation of rights and responsibilities means that the rights and responsibilities allocated to each gender must be appropriate for each gender as per that time and place, or in other words, they are allocated to each in accordance with their existential aptitudes; and this in turn means that Sharīʿa rights and responsibilities are contingent upon existential states and not vice versa.

Similarly (that is, in light of the aforementioned deliberations and understanding of the notion of 'God's bestowal of existential aptitudes (*faḍl*) to men'), the following is the existential understanding of Q. 4:34: 'the assignment of the status of *qiwāma* (governorship) to men' is contingent upon 'God's bestowal of *faḍl* (existential merit) upon men' and has ramifications on both societal gender roles and spousal relations, rights, and responsibilities; the notion of 'God's bestowal of *faḍl* upon men' refers to the superior existential state of men in comparison to women generally in seventh-century Arabia insofar as they were rationally and physically more accomplished than the latter; as discussed above, the notion of 'God's bestowal of *faḍl* upon men' pertains to existential aptitudes, hence the verse's 'assignment of the status of *qiwāma* to men' is based on its assessment of the degree of existential merit (*faḍl*) of each gender; its assessment was accurate, pragmatic, and straightforward, and 'the assignment of the status of *qiwāma* to men' was fair and catered for the needs of its initial audience. In essence, however, the notion of 'God's bestowal of *faḍl*' can refer to either (a) individual or single existential aptitudes of individuals and/or collectivities or (b) the notion of existential aptitudes as a whole apropos individuals and/or collectivities. Thus, the notion of 'God's bestowal of *faḍl*' is relative and its bestowal differs from individual to individual and group to group as alluded to in the following clause of the verse, 'because of God granting merit (*faḍḍala*) to some over others'. The implications of this existential understanding are as follows:

1. In any given time, individuals may excel one another with respect to different aptitudes. Thus, it cannot be asserted that one gender has superior faculties of reason than the other *absolutely*; rather, individuals can excel one another in differing fields of human intellectual thought at any given point. Similarly, 'God's bestowal of *faḍl*' in terms of physique cannot be confined to just physical strength qua physical strength, but rather it needs to be understood as physical strength qua 'physical abilities required to complete the activity under question'. Hence, women work on cotton farms and rice plantations, and are accomplished in crafts, such as pottery and weaving, in countries where the opportunities to

pursue education are lacking. Often, such women are breadwinners and contribute significantly to the upkeep of the family, and in many cases, they are the main or even the sole providers for their families. In such cases, God has 'bestowed *faḍl* (existential merit)' upon them and not their menfolk.

2. As per the existential property and *telos* of growth, human beings are constantly actualising their inherent existential potential by engaging with the opportunities available to them. Thus, over time and the steady progress of humankind, the notion of 'God's bestowal of *faḍl* upon men', and hence not women, does not apply in collectivities in which both genders have equal opportunities to actualise their abilities.

CONCLUSION

The universality and immutability that is ascribed by traditional Islamic scholarship to societal gender roles and spousal relations, rights, and responsibilities espoused in the Sharīʿa regulations and stipulations of the revelatory era assumes an ontology that is fixed and static. This paper asserts that this assumption is false, and the opposite is true – 'apparent' existence is dynamic and in a constant state of flux. In view of this, the purpose of Sharīʿa regulations and stipulations is to facilitate the existential growth of the individual and collectivity. Hence, as people grow rationally, morally, and spiritually, and/or time and place change, societal regulations and stipulations that are suboptimal in facilitating such growth must be reformulated.

The initial assignment of 'men being a degree (*daraja*) above women' vis-à-vis rights and responsibilities in Q. 2:228, and the subsequent 'assignment of the status of *qiwāma* to men' in Q. 4:34, were based on an accurate appreciation of the existential aptitudes of men and women during the revelatory era generally. The menfolk of its existential contexts were more accomplished than their women generally both rationally and physically. They were more suited to the environment and culture of that time, which entailed hard labour and warfare often.[66] Over time, both individuals and collectivities have become more sophisticated. The means of earning have changed dramatically and the operationality of the rational faculties of both genders are on par with each other in most collectivities in the world. Thus, the notion of 'God's bestowal of *faḍl* (existential merit)' has to be representative of the existential aptitudes of men and women today and hence more nuanced.

66 See El-Nimr, 'Women in Islamic Law', 97; Shaikh Inayatullah, 'Pre-Islamic Arabian Thought', in *A History of Muslim Philosophy: With Short Accounts of Other Disciplines and the Modern Renaissance in the Muslim Lands*, vol. 1, ed. Mian Mohammad Sharif (Delhi: Low Price Publications, 2004), 132–34.

Today, individual men and women excel each other in a variety of ways and domains. Thus, there is no sense in generalising 'God's bestowal of *faḍl* (existential merit)' to just one gender and not the other in existential contexts in which both men and women have equal opportunities to actualise their innate potentialities. Consequently, it is also meaningless to generalise the notion of 'the assignment of the status of *qiwāma* (governorship)' to just one gender in such existential contexts due to the causality between it and the notion of 'God's bestowal of *faḍl*'. To do so would be factually inaccurate and hence inconsistent with the spirit of the verse.

From an existential perspective, therefore, each collectivity must assign rights and responsibilities to its individuals in accordance with their aptitudes and the principle of justice (which is to give everything its rightful due). In collectivities such as the UK, it is right that societal roles – for instance, prime ministership, judgeship, teaching, and principalship of educational establishments – are allocated to individuals based on merit and ability. Thus, the view of Shahrur holds true for such existential contexts and collectivities. In other words, 'the assignment of the status of *qiwāma* (governorship)' to individuals of such collectivities and existential contexts must be based on merit and ability. However, in collectivities in which there is a strict demarcation between male and female roles, such as when women are expected to raise children and be housewives, then the notion of 'the assignment of the status of *qiwāma* (governorship) to men' generally is valid, and hence men would be charged with the responsibility of '*infāq* (provision) of the spouse and dependants'. In such cases, societal gender roles and spousal relations, rights, and responsibilities will be defined and assigned in accordance with the context of such collectivities and not on the basis of individual merit and ability.[67]

Therefore, 'the status of *qiwāma*' (governorship) must be assigned to men generally with respect to societal gender roles and spousal relations, rights, and responsibilities in collectivities and existential contexts in which women have not been given the opportunity to actualise their innate potentialities; however, they are not to be assigned 'the status of *qiwāma*' in contexts in which equality between the sexes is presumed. In turn, the nature of the marriage contract must also be congruent with the different degrees of *faḍl* (existential merit) bestowed upon individuals and their collectivities. These different degrees of *faḍl* will then give rise to corresponding notions of *qiwāma* (governorship), which will be assigned to either one or both spouses. Hence, in collec-

67 This does not mean that men in such collectivities today (i.e. in those in which they are assigned the status of *qiwāma*) have absolute *qiwāma* as they did during the revelatory era; rather, they are to be assigned it only to the extent that, or in areas in which, women have not actualised their potential. Thus, men in such collectivities today may have the unilateral right to divorce on account of being responsible for *infāq*, and yet women in those same collectivities who have actualised their potential can hold societal positions, such as judgeship and religious authority.

tivities and existential contexts – such as the UK – in which *faḍl* (existential merit), and its corollary *qiwāma* (governorship), is ascertained on an individual basis, the onus of paying *mahr* (dower), the unilateral right to coitus at will, the unilateral right to divorce, and other such rights conferred upon men exclusively upon ratification of the marriage contract are meaningless. In fact, the husband's unilateral right to coitus at will is problematic even in Islamic countries, for all such countries are signatories of the Universal Declaration of Human Rights (UDHR).[68]

In conclusion, this paper demonstrates that (i) the Sharīʿa regulations and stipulations of the revelatory era governing societal gender roles and spousal relations, rights, and responsibilities were formulated in accordance with 'God's bestowal of *faḍl* (existential merit)' upon the men and women of the revelatory era; (ii) the notion of 'God's bestowal of *faḍl*' refers to the existential aptitudes he bestows upon individuals, collectivities, or genders in any given time and place; (iii) the existential aptitudes of individuals, collectivities, or genders are subject to change with the growth of humankind; (iv) thus, the Sharīʿa regulations and stipulations of the revelatory era governing societal gender roles and spousal relations, rights, and responsibilities, which were formulated in accordance with the existential aptitudes of the people of that era, are neither universal nor eternal; and (v) therefore, societal gender roles and spousal relations, rights, and responsibilities enshrined in the Sharīʿa regulations and stipulations of the revelatory era are mutable and ought to be subjected to periodic appraisals.

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68 See Clinton Bennett, *Muslims and Modernity: An Introduction to the Issues and Debates* (London: Continuum, 2005), 63.

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