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Edited by  
Noorhaidi Hasan, Irene Schneider  
and Fritz Schulze

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# Indonesian and German views on the Islamic legal discourse on gender and civil rights

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Cover illustration: Mesjid Gedhe Kauman, the royal mosque of Yogyakarta  
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# Translational Turn and international law: gender discourses in the Islamic Republic of Iran

Irene Schneider

## 1. Introduction to the field

In this article I analyze the discourses on the implementation of international human rights in Iran in a certain period, thereby focusing especially on the concept of gender-(in)equality. As examples I selected two well known female jurists, Fariba 'Alāsvand and Shahīndokht Mawlāverdi as representatives of contradictory positions with regard to gender-equality and the implementation of international human rights.

International Law and especially international covenants claim universality but have to be transferred to the national legal contexts of the nation states<sup>1</sup>. Dealing with the implementation of international covenants into the national legal context jurists of international law often speak of the “migration” of the concept of (human) rights<sup>2</sup>, thereby concentrating on the process of “traveling” or “coming to” the nation state. In their book *The Power of Human Rights*, Risse/Sikkink (1999) investigate the general conditions under which international norms are implemented in states. They argue that international human rights norms challenge state rule over society and national sovereignty, are well institutionalized in international regimes and organizations, and are contested and compete with other principled (sic! IS) ideas.<sup>3</sup> They argue that the diffusion of international norms in the area of human rights depends crucially on the establishment and the sustainability of networks among domestic and transnational actors especially NGOs (Non-Governmental Organizations) and INGOs (international NGOs) that manage to link up with international regimes to “alert Western public opinion and Western government”<sup>4</sup>. They challenge norm-violating governments by creating a transnational structure to pressure such regimes “from above” and “from below”. Risse/Sikkink call the process by which

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1 Risse&Sikkink 1999; Ali 2000.

2 Baer 2011.

3 Risse&Sikkink 1999: 4.

4 Ibid.: 5.

international norms are internalized and implemented domestically a process of “socialization”<sup>5</sup> and use a “spiral model” to illustrate its stages which are:

1. Repression of human rights activities.
2. Denial: Repressive state denies the validity of human rights norms.
3. Tactical concessions: Concessions to the human rights network, reduced room for maneuver against human rights.
4. Prescriptive status: State accepts international norms, ratifies treaties and institutionalizes norms domestically.
5. Rule-consistent behavior.<sup>6</sup>

In phase 1 domestic-societal opposition is too weak or too oppressed to present a significant challenge to the government. In phase 2 the norm-violating state is put on the international agenda of the human rights networks. This serves to raise the level of international public attention toward the “target state”. If this continues and escalates, the norm-violating state seeks cosmetic changes to pacify international criticism in phase 3. Phase 4 sees the actors involved regularly refer to human rights norms to describe and comment on their own behavior and that of others. It is a necessary step toward, but not identical with the next phase, phase 5: rule-consistent behavior. Governments might accept the validity of human rights norms, but still continue to torture prisoners or detain people without trial, etc.<sup>7</sup>

This model<sup>8</sup> is developed by the authors as a “theory of the stages and mechanisms through which international norms can lead to changes in behavior”<sup>9</sup> but the authors do not assume an evolutionary or automatic progress. Instead they suggest that regimes might return to oppression after some tactical concessions in phase 3 when international pressures have decreased. States might not care about transnational and international opposition concerning their behavior.<sup>10</sup> They argue that countries that resist are not economically weak per se but do not care about their international image. Furthermore, Risse/Sikkink are well aware – as seen on the quotation above – that international human rights norms “compete with other principled ideas”<sup>11</sup> but they do not elaborate on this.

It is here that I would like to start with my analyses: What are the conditions under which human rights Conventions, in this case the CEDAW (Convention on the Elimination of all Forms of Discrimination against Women, 1979) are adopted in Iran? How is this process connected to the dominance of “other principled ideas”? What are these principled ideas and what is their role? As an example I take the discussion on human rights and the concept of gender and gender-roles, the question of gender-equality and gender-hierarchy in the Islamic Republic of Iran which

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5 Risse&Sikking 1999: 5.

6 Ibid.: 20.

7 Ibid.: 19–35.

8 Ibid.: 18.

9 Ibid.: 2.

10 Ibid.: 34.

11 Ibid.: 4.

evolved around 2004–2006 when the ratification of the CEDAW was under discussion in Iran and then rejected. I do not focus on the role of NGOs and INGOs in this article. I have analyzed the discourse and practices of civil society in connection with the debate of the new Family Draft Law in 2008 in Iran elsewhere.<sup>12</sup> The discourse in the public sphere in 2008, however, did not refer to international conventions, e.g. the CEDAW. On the contrary, it seemed to be taboo, whereas arguments pointing to Islamic law, statutory Iranian law, society and its evolution and the necessities of a modern state were widely used.<sup>13</sup>

Iran is one of the few states in the world that has not yet ratified the CEDAW, unlike the majority of Muslim states. Most Muslim states ratified the CEDAW with reservations, often referring to Islam or religious law, sharia.<sup>14</sup> The CEDAW was accepted by the Iranian Parliament, but rejected on 1/5/1382 /August 7<sup>th</sup> 2003 by the Council of Guardians, an organ which determines whether laws passed by the Parliament are “Islamic” or not. The matter was then referred to the Expediency Council, where to date (July 2014) it is still awaiting a final verdict. According to Osanloo<sup>15</sup> there was a lively public debate on the CEDAW in 2003 prior to the decision by the Council of Guardians. At this time the sources of tension between Islamic principles, human rights, and specific discriminatory practices were subjects of constant conversation among advocates.<sup>16</sup> More often than not, pious Muslim women’s rights advocates spoke of the patriarchal “misapplications” of Islam. These tensions were not seen as inherent in Islam but in the discriminatory manner in which these ideas had been mobilized. The public debate eventually died down and in 2008 it was not considered constructive or politically acceptable to mention the CEDAW or more generally international human rights in discussions about the Family Draft Law. The CEDAW was dealt with at a scholarly level, but not in public discourse. ‘Alāsvand and Mawlāverdī are, on the other hand, representatives of a broader discussion not on the CEDAW but more generally on related gender-concepts. An interesting development can be seen in the fact that both of them were given high political positions in the Islamic Republic after the election of Hasan Rohani as President in June 2013.

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12 Schneider 2010.

13 This is different in other Muslim states where international covenants and especially the CEDAW are often referred to not only by actors of the civil society but also by the state itself, e.g. the king of Morocco; see: for Morocco Buskens 2003, for Palestine see Welchman 2003.

14 For the text of the Convention, the state parties and the reservations see: <http://www.un.org/womenwatch/daw/cedaw/>, accessed on February 4, 2014.

15 Osanloo 2009.

16 Ibid.: 188–191.



## 2. Aims, theories, method of research

The question that arises is how the regulations of international law are exactly integrated into the national legislation or, with regard to Iran, how the discussion about the CEDAW and the connected concepts and terminology of gender-equality continued even after ratification was denied. My hypothesis is that human rights can only be incorporated through actors within local issues and realms of consciousness. Given their political and scientific role, the two scholars I selected are representatives of public discourse in the Islamic Republic.

The term “translation” is used when describing the discussion process of the CEDAW with reference to Doris Bachmann-Medick’s recently-published article “Human Rights as a Problem of Translation” (*Menschenrechte als Übersetzungsproblem*). She speaks out for a “Translational Turn”<sup>17</sup>, arguing that translation refers both to a category of practice as well as to an epistemological category of analysis. In cultural studies, “translation” as a category of analysis is understood to be the relaying or negotiation of a concept; a semantic shift or transformation through its transfer into a new context.<sup>18</sup> Human rights concepts and conventions etc. are “translated” into the foreign cultural context<sup>19</sup> and it is this process of translation which needs to be focused on. The question arises how certain terms and concepts are expressed in another language whereby the chosen terms or “translations” carry perhaps a different cultural understanding and connotation. In such a discursive process many different “translations” occur in the sense of cultural interpretations and connections to different understandings. Translations are understood to be complex cultural processes that underlie a methodic inter-culturalism. Thus the harmonizing image of translation as bridge-building between cultures surely must be abandoned; negotiating of differences is the main task in this context.<sup>20</sup> Chakrabarty sees translation as displacement.<sup>21</sup> It is therefore necessary to concretely focus on the actors and tangible realms of translation and on the used terminology.<sup>22</sup>

This is what will be done in this article: focusing on concrete speech, the terminology and concept of gender (in)equality or gender roles (3.2), the concept of feminism (3.3), as well as the role of religion (Islam) and, more exactly, of religious law (3.4). Strategic arguments presented in favour of or against the ratification of the CEDAW are analyzed as well (3.5).

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17 Surely this “turn” is not completely “new”. For similar discussions see: Najmabadi 1998, 2006: 13; Merry 2006: 102, 177; Abu-Lughod 2009: 91–97. If I opt here for the implementation of the “translational turn” it is more for bringing into conscious this important aspect of concentration on the language and terminology as closely connected to cultural concepts.

18 Bachmann-Medick 2012: 331.

19 *Ibid.*: 336.

20 *Ibid.*: 332.

21 quoted in: *Ibid.*: 341

22 *Ibid.*: 334.

Bachmann-Medick compares the Universal Declaration of Human Rights (UDHR 1948) to the Islamic Declaration of Human Rights of Cairo (IDHR 1990) and asks what translation exactly means and where translation becomes a revision of the letter and the spirit of the Universal Declaration of Human Rights. The IDHR is, according to her, a revision of the text and the spirit of the UDHR.<sup>23</sup> Thus the relevant question is: When can we speak of a translation into a different cultural context and when do we have to see this outcome of the discussion as a revision of the letter and spirit of the original text?

The questions discussed so far refer to the “arrival” of human rights instruments in another cultural context and the question of how these “translations” take place. There is another powerful discourse criticizing the application from a mostly political point of view. This will become evident from ‘Alāsvand’s arguments but it is also a topic in the feministic research on the Middle East mainly centered in the US. Regarding the Arab Human Development Report 2005, which has references to international covenants, especially the CEDAW, Lila Abu-Lughod harshly criticizes the “pathologizing” of the Middle East in painting a negative picture of women’s rights and lives there.<sup>24</sup> She fears that the report focusing on the Arab world could be appropriated in negative ways, and that it attributes a significant role to the Arabic and Islamic culture in creating a dichotomy of modern – traditional and, with respect to gender-roles, sees “the” Islamic culture as a culture of gender-inequality.<sup>25</sup> The transnationalism of international concepts expressed in language, a particular “international” or “transnational” dialect which frames the rights and transports certain assumptions and politics is also criticized by her.<sup>26</sup> Abu-Lughod is aware that a patriarchal family has “its problems” but does not discuss its role and the connected gender-concepts in detail. Instead she concentrates more on political oppression than on gender oppression.<sup>27</sup> She blames the three keys to women’s empowerment in the report: education, employment, and individual rights as imposed by a hegemonic Western discourse, and would not see “individualization” as a way to empower women to leave this patriarchal family structure behind. She gives no clue how these hierarchical gender relations should be reduced or whether gender equality is a desirable aim at all.<sup>28</sup> She is, as will become evident, quite in accordance with the very conservative Iranian scholar ‘Alāsvand who rejects the CEDAW equally because it is in favor of individual rights for males and females, seeing this as endangering the family structure. Abu-Lughod somehow romanticizes Middle Eastern grand-family-structures – which, by the way, are on the retreat in the urban areas of the Middle East much as anywhere else in globalized modernity. Accusing the report of presenting an ideological and unhistorical family assessment, she then herself con-

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23 Bachmann-Medick 2012, 343.

24 Abu-Lughod 2009: 98.

25 Ibid.: 85.

26 Ibid.: 83.

27 Ibid.: 90.

28 Abu-Lughod 2009: 87, 90.

structs “the family” with whom she was acquainted during her research in rural Egypt, thereby ignoring the plurality of family forms and structures in the Middle East (as well as in Europe). Instead she points to the political oppression of women in the Middle East, which surely exists. Important within the context of this article is her approach to the language, which she calls a “dialect of (neo)liberalism”. She argues that the particular hegemonic language used for the report has serious consequences not only for the ways in which it frames problems, but also in the ways in which it proposes solutions.<sup>29</sup>

When the conclusion of the report calls for empowerment and overcoming “the legacy of backwardness” by “eliminating all forms of discrimination against women in Arab society”, it admits freely that the borrowing here of exact language from CEDAW “is not accidental”. It is meant as “a reminder that this national objective is, at the same time, an international objective that humanity as a whole seeks to achieve. It is also an Arab commitment towards the international community”.<sup>30</sup>

Her critique of this international language may be correct but Abu-Lughod overlooks that these terms and concepts are not so much imposed – not at all in Iran as will become evident – but are integrated into the cultural context in a complex process of cultural “translations”.

### 3. Discourse about the CEDAW

Article 2 in the CEDAW is the basis for the discussion about equality:

#### Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;<sup>31</sup>

The “principle of the equality between men and women” reads in the Arabic translation (there is no official Persian translation): *mabda’ al-musāwāt bayn al-rajul wa al-mar’a*, *musāwāt* having the same Arabic root as *tasāwī* (s-w-y) which is, as will be shown, used in the Persian translation.<sup>32</sup>

<sup>29</sup> Ibid.: 91.

<sup>30</sup> Ibid.: 94.

<sup>31</sup> See: <http://www.un.org/womenwatch/daw/cedaw/text/eConvention.htm>, accessed on July 12, 2014.

<sup>32</sup> See the Arabic translation: <http://www.un.org/womenwatch/daw/cedaw/text/0360793A.pdf>,

The Council of Guardians rejected the CEDAW, which had been accepted before by the Parliament, pointing to Article 28, no 2<sup>33</sup> a general incompatibility with the aims (and?) intentions of the Convention. Iran would have to adhere to this Convention which is against the necessities of Islam, the indisputable criteria (*dawābiṭ*) of Islam and against several principles of the constitution, especially article 2 and 3<sup>34</sup>, 4, 10, 20, 21, 72, 115, 153. Especially the first articles of the Constitution focus on Islamic belief and rules as the basis of the Islamic Republic of Iran.<sup>35</sup>

Focusing, as said before, on the micro-level of the terminology, I will seek to answer the following questions:

1. Which terminology for gender-roles – gender-(in)equality is used? What other key concepts are discernable?
2. What do these terms and concepts reveal about the basic gender concepts?
3. Can the discussion of those concepts of gender-relations proposed by the protagonists be judged as a “translation” of international law into local contexts or must it be seen as a “revision” of the letter and spirit of the Women’s Convention?

In a first step I will take a look at two terms which are of pivotal importance for the gender-discourse: *tasāwī* which means in Arabic and Persian according to the dictionaries<sup>36</sup> “equality” and *tashāboh*, which, also from an Arab root, means if looked up in the dictionary “similarity”.<sup>37</sup> In what follows it will become evident that the translation as looked up in the dictionary is not in accordance with the “cultural translation” as e.g. by ‘Alāsvand. The “transnational or international dialect” so heavily criticized by Abu-Lughod, is, as will become evident for the Iranian context, not imposed with the accompanying concepts but introduced into the national and cultural context of the Iranian legal discourse.

It is not possible to discuss gender roles and questions of gender equality in the Islamic Republic without reference to Āyatollāh Moṭahhārī (1920–1979) an influential cleric and ideologist of the Islamic Republic because he is often referred to in the discussions about gender. Also the two jurists whose discussion I will analyze, ‘Alāsvand (2004) and Mawlāverdi (2003–2005), quote him. Further important terms are “feminism” because here especially ‘Alāsvand defines her position in rejection of those “Western” concepts defended by “feminism”, as she argues and to which Mawlāverdi also refers, as well as “Islam” or “Islamic law”. Finally it is interesting

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accessed on July 12, 2014.

33 See: <http://www.un.org/womenwatch/daw/cedaw/text/eConvention.htm>, accessed on July 12, 2014: 2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

34 See: <http://www.iranonline.com/iran/iran-info/government/constitution-1.html>, accessed on July 12, 2014.

35 I have a copy of the Council’s writing to the Parliament.

36 Emāmī 1386/2008.

37 Ibid.

to look on a formal level at the arguments in favor or against an implementation of the CEDAW in Iran.

### 3.1 The protagonists

#### 3.1.1 Mortazā Moṭahharī (1920–1979)

Āyatollāh Mortazā Moṭahharī (1920–1979)<sup>38</sup> was one of the main proponents of Shiite modern thinking on family issues. His major book *The System of Women's Rights in Islam* (Pers. *neẓām-e hoquq-e zan dar Eslām*) was a polemic against the defenders of male-female equality as reflected in the UNDHR on two grounds. He argued against the Western tendency to measure the status of women in different societies in terms of its observance. He saw the Declaration as being based on the philosophy of “individualism” which was in his view contrary to Islam – an argument which was taken up, as we saw above, by Abu-Lughod in her critique of the “dialect” of the AHDR. The Middle Eastern – in Moṭahharī’s words: the Islamic – world clearly gives priority to the rights of society over the rights of the individual and that is why Muslims are obliged to observe social rules as stated in the Quran. He argues that the call for “equality” of rights irrespective of sex is unacceptable in Islam because it confuses “equality” with “similarity” or sameness of rights.<sup>39</sup> This reference to “equality” and “similarity” became a slogan in the gender-discourse of the Islamic Republic and will be analyzed more detailed below.

#### 3.1.2 Farība ‘Alāsvand

Farība ‘Alāsvand (1967–) is called a Shiite religious authority in Iran by the Wikipedia-article<sup>40</sup> dedicated to her, she holds an PhD in women’s issues and is professor at Zahra University (*hawže*) in Qom. She published a book in 2004 entitled “Critique of the CEDAW” (Pers. *Naqd-e konvensyūn-e raf‘-e kollīyeh-ye eshkāl-e tab ‘īze ‘alayhe zanān*) in which she examines the CEDAW in detail, rejecting it as “un-Islamic”. She argues from the view point of international law, national Iranian law and Islamic law. During my field research in Iran between October and December 2008 I interviewed her. In January 2014 she was appointed a member of the High Council of Cultural Revolution (Pers. *Shūrā-ye ‘alī-ye enqelābī-ye farhangī*),<sup>41</sup> and therefore holds an important political position in the country.

#### 3.1.3 Shahīndokht Mawlāverdī

Shahīndokht Mawlāverdī is a jurist and for a long time was head of International Affairs at the Center for Women’s Participation. In 2003 as head of this center she

38 See also: [http://en.wikipedia.org/wiki/Morteza\\_Motahhari](http://en.wikipedia.org/wiki/Morteza_Motahhari), accessed on February 5, 2014

39 Paidar 1997: 175.

40 See: [http://en.wikipedia.org/wiki/Fariba\\_Alavand](http://en.wikipedia.org/wiki/Fariba_Alavand), accessed on February 5, 2014.

41 <http://feydus.ir/ShowNews-218293.aspx>, accessed on February 5, 2014; see also: [http://radio.irib.ir/persian/modulespage.aspx?modulename=radiomaaref\\_AExpert&id=180&PortalID=12](http://radio.irib.ir/persian/modulespage.aspx?modulename=radiomaaref_AExpert&id=180&PortalID=12) accessed on February 5, 2014.

was active and pushed for the ratification of the CEDAW albeit with reservations.<sup>42</sup> In 2008 she criticized many points of the draft law on Personal Status then proposed by the government.<sup>43</sup> She has written much and about the CEDAW in particular “Equality between women and men: complete similarity or difference with equality” (Persian title: *Barābarī-ye zan o mard: tashāboh-e moṭlaq yā mutafāvet amma musāvī*, without date)<sup>44</sup>; “Islam and Equality of woman and man – according to which reading?” (Persian title: *Eslām va-barābarī-ye zan va-mard, bā kodām qirā’at?*, March 2002); Discourse of welfare and CEDW (Persian title: *Goftomān-e maṣlaḥatgerā va-konvensiyūn-e raf’-e kolliyyat-e eshkāl-e tab’īd ‘alayhe zanān*, 6. 1383/August 2004). She was recently appointed as Rouhani’s vice president and head of the Center of Women and Family Affairs. As will become evident this could mean a serious change in the gender policy of the Islamic Republic of Iran – but it is still too early to be sure about this.<sup>45</sup>

Both jurists refer in their arguments to the same key terms and concepts.

### 3.2 *Tasāvī* and *tashāboh*: the terminology on gender equality

What terminology is used to negotiate gender (in)equality and to which concept of gender relation is it connected? How is the reference to the CEDAW established? The translation given by the dictionary for *tasāvī* = equality and *tashāboh* = similarity is also the translation Moṭahharī uses in the English abridged version of his book “The Qur’ānic view of human position of women”, but as will be shown his understanding and definition of equality is quite different from the definition given in the international Conventions. Mortazā Moṭahharī advocates “equality” (Arab./Pers. *tasāvī*) while explicitly speaking out against “similarity”, or “resemblance” (Arab./Pers. *tashāboh*).

Saying that: *tasāvī/barābarī* are the equal legal rights of men and women (*ḥoqūqī-ye mosāvī-e yekdīgar*) and that no legal privileges are given<sup>46</sup>, it is self-evident that “equality” (*tasāvī*) is part of human nature (*ḥaythiyyat-e insānī*) and that equality is to be counted a human right (*ḥoqūq-e ensānī*).

He states that Islam “is not opposed to the equality of the rights of men and women; it is opposed to the similarity of their rights”<sup>47</sup>. He views *tashāboh* to mean that the rights of men and women are “*motashābīh*” and “monotone” (*yeknavākht*)<sup>48</sup>, writing

42 Osanloo 2009.

43 Schneider 2010.

44 Publications without date are quoted with the short title. I use this and the following article because in it she elaborates on the terminology of this discussion especially with reference to equality, which is, as we will see, a sensitive issue.

45 For further information see: [http://fa.wikipedia.org/wiki/%D8%B4%D9%87%DB%8C%D9%86%D8%AF%D8%AE%D8%AA\\_%D9%85%D9%88%D9%84%D8%A7%D9%88%D8%B1%D8%AF%DB%8C](http://fa.wikipedia.org/wiki/%D8%B4%D9%87%DB%8C%D9%86%D8%AF%D8%AE%D8%AA_%D9%85%D9%88%D9%84%D8%A7%D9%88%D8%B1%D8%AF%DB%8C) accessed on February 5, 2014.

46 Moṭahharī 1978: 111ff.

47 Moṭahharī: Quranic View: 6.

48 Moṭahharī 1978: 111.

If we decide not to blindly imitate Western philosophies, i.e. giving ourselves the right to ponder on philosophical thoughts and opinions which are imparted to us, we should first see whether the equality of the right demands the similarity of them or not. Equality is not similarity – equality is the state of being equal; that is the same in number, size, merit, etc., while similarity is merely likeness or resemblance.<sup>49</sup>

For him the term “*tashāboh*” is obviously negative, *tasāvī*/equality is positive:

... It is possible, therefore, that a father distributes his wealth among his children equally (*be-ṭour-e motasāvī*) but not with similarity. For instance, suppose that his wealth consists of such items as commercial firms, arable lands, rental estates and so forth, and that he has previously measured his children’s talents and faculties, discovering one’s taste in trade, other’s interest in agriculture and the other’s skill imagining the affairs concerning the real estates. He would, therefore, allocate to each of his children an equi-value portion, regardless of any privilege or preference, which is simultaneously in harmony with their talents and interests; in other words, an equal but dissimilar share.<sup>50</sup>

Seen before the backdrop of Islamic inheritance law this example is strange because according to Islamic law there are clear portions for every person according to his/her status in the family which include a gender difference in what males and females are entitled to; a female at the same relationship level – here in this case daughters – gets half of the male’s share, the son. In Persian the word “*farzand*” can be equally applied to a son or a daughter as is the case with the English word “child”; so the example does not give any clue about his understanding of gender “equality”.

He continues that Islam does not establish similar or identical rights for both men and women but also says that Islam never favors men with any legal privilege and preference which it withholds from women. Islam strictly observes the principle of the equality of human beings.<sup>51</sup> Why has Islam established dissimilar rights for men and women in a number of instances? In what follows he deals (1) with the Islamic view of the human position of women in creation and the aims of the differences in creation between men and women. Do these differences cause a dissimilar situation for men and women so far as their natural rights are concerned?<sup>52</sup>

The matter on Islam’s account is that man and woman, due to the very reason that one is a man (male) and the other a woman (female), are not unanimous in many respects. The world is not the same to both of them. They have been destined by nature and creation not to receive absolute sameness. These de-

49 Moṭahharī: Quranic View: 4–5.

50 Ibid.: 5; Moṭahharī 1978: 112.

51 Moṭahharī: Quranic View: 5–6.

52 Ibid.: 9–10.

mand a dissimilar situation for them in a great range of rights, obligations and penalties.<sup>53</sup>

Nowadays, he argues, efforts are being made in the West to bring about a unanimous state in laws and regulations for men and women regardless of the natural and instinctive differences by which they are distinguished. This draws the line of difference between Islam's view of women and that of Western systems of thought. In his country it is the problem of similarity, not the equality of rights which creates the controversy between partisans of Western laws and advocates of Islamic laws.

However, imitators of the West have labeled "the similarity of rights" (which is the real point of argument) with the counterfeit mark of "the equality of rights" (on which Islam has no argument).<sup>54</sup>

And "Islam does not maintain the same type of rights, duties and penalties for men and women in all circumstances. Rather, it considers certain rights, obligations and punishments more suitable for men than for women and vice versa"<sup>55</sup>. In the end it becomes evident that because of this "natural" difference polyandry is against human nature whereas polygyny is accepted by Islam.<sup>56</sup>

ʿAlāsvand

According to ʿAlāsvand the keyword of the Convention is "absolute equality between woman and man" (*tasāvī- va-barābarī-ye moṭlaq-e zan va-mard*). Referring to Mortazā Moṭahhārī and the writings in "our country" this kind of equality must be seen as "*tashāboh*" and therefore rejected:

The result is, that the Convention is in contradiction not only from the religious standpoint in the area of *feqh* and obligation, but also from our beliefs and our theoretical basics; to say it with other words: the Convention in all and principally and fundamentally is in contradiction with our religious point of view and does not fit in the frame of sharia.<sup>57</sup>

Being a "keyword" one would expect ʿAlāsvand to extensively explain why "similarity" is the content of the Convention but she does not elaborate on this. In footnote 1 on page 36, she only gives some clues, when for example saying that an examination of the Convention shows that the Convention negates sex (*jensiyyat*).<sup>58</sup>

53 Moṭahhārī, *Quranic View*: 19.

54 *Ibid.*: 20.

55 *Ibid.*: 1.

56 Moṭahhārī 1978: 336–337.

57 ʿAlāsvand 2004: 35.

58 For the English version of the CEDAW see: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> accessed on July 12 2014; there is only an Arabic official translation on the UN-Website, but ʿAlāsvand has given a Persian translation in the annex of her book, see 149–66.



She refers to the Introduction and the Articles 10 and 11<sup>59</sup> which run in English as follows:

Introduction

[...]

[...] all human beings are born free and *equal* (Italics mine, IS) in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, *including distinction based on sex*, (Italics mine, IS).

[...]

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of *equality of men and women* (Italics mine, IS):

[...]

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

Article 11

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of *equality of men and women* (Italics mine, IS), the same rights, in particular:

[...]

The phrase “including distinction based on sex” is for her *tashāboh*.<sup>60</sup> Quoting the articles regulating the gender relations in the Convention she merely summarizes them without commenting them or corroborating her claims.<sup>61</sup> She states that according to Article 1, the special position of women in the family may not be the basis for these differentiations.<sup>62</sup>

59 'Alāsvand's quotations abridge the text and do not correspond accurately with her translation given in the annex of her book.

60 But in the translation of the Convention's text which she gives in the annex ('Alāsvand 2004, 149–166) the English “equality” is given either as the Persian *barābarī* or the Persian-Arabic *tasāwī*. The Arabic version of the CEDAW uses in these places the Arabic *musāwāt* (Introduction, Art. 10) and *tasāwī* (Art. 11), all derived from the same Arabic root (s-w-y).

61 'Alāsvand 2004: 27–32, dealing with article 1–16.

62 'Alāsvand 2004: 28.

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

She does not comment upon Article 4, in which the adoption of special measures aimed at protecting maternity shall not be considered discriminatory, which shows that the Conventions does differentiate between males and females and gives special prerogatives to women as mothers. For her it is completely obvious that absolute equality<sup>63</sup> is not compatible with Islamic religion, so that “we” have to choose either the Convention or the religion. The Convention will abolish the differences between the sexes, in the name of the struggle against discrimination. Even if there would be only Article 1 in the Convention, the discrepancy with Islam would be enough. Islam clearly distinguishes between the sexes with regard to rules and ethics.<sup>64</sup> These very general arguments do not give any clue which phrases would give exact reference to “absolute” equality. There is no explicit argument so that one cannot help but has to state that she reads the term *tashāboh* – as she calls it “absolute equality” – into the text.

Dealing with gender concepts on the basis of religious and legal arguments she states that soul (*rūhānī*) is not gendered in Islam (*fāregh as jensiyyat*) and there are common propositions between men and women in ethics (*akhlāq*) and jurisprudence (*feqh*), but there are physical and some psychological differences between the sexes (*tafāvōthā-ye jasmānī va-barkhī mokhtaṣṣāt-e ravānī*) which lead to differences in the gender morality (*akhlāq*) and rights.<sup>65</sup> She deals extensively with the differences of gender from the biological and psychological point of view, quoting “scientific” confirmation, referring to ‘Allāmeḥ Ṭabāṭabā’ī (1892–1981)<sup>66</sup> according to whom differences in jurisprudence between men and women rest on two factors. The first is that women “being the field” or “being the place of cultivation”(Pers. *herth būdan*) according to a Qur’ānic verse (2:223):

Your wives are a place of sowing of seed for you, so come to your place of cultivation (*herth*) however you wish and put forth [righteousness] for yourselves. And fear Allah and know that you will meet Him. And give good tidings to the believers.<sup>67</sup>

And second is again a biological-psychological argument, an alleged “softness of the physical constitution” (*letāfat-e bonye*) and a “thinness of perception” (*reqqat-e*

63 Ibid.: 53.

64 Ibid.: 54.

65 ‘Alāsvand 2008: 38.

66 [http://de.wikipedia.org/wiki/Allameh\\_Tabatabai](http://de.wikipedia.org/wiki/Allameh_Tabatabai), accessed on July 12, 2014.

67 <http://quran.com/2>, accessed on July 12, 2004.

*edrāk*).<sup>68</sup> The first, the “being the field” she explains, anyhow, being based on Quran, points according to her also to woman’s role in reproduction. This, as she explains, brings women in the special position of “being desired” (*maḥlūbiyyat*). With regard to gender relation they are effected and sometimes vulnerable because of their very close relation with life, in birthing and raising their offspring they have a qualitatively and quantitatively different relation to men (*mardān*). The “softness of the physical constitution and thinness of perception” also point to the delicacy (*ẓerāfat*) of the thoughts of women. Because of their volatile sentiments (*eḥsāsāt-e jūshān*) women are more attracted to beauty-seeking elements (*‘unṣur-e zībā’ikhāhī*), creativity (*honar-āferīn*) and everything which stems from sentiments.<sup>69</sup>

The “softness of the physical constitution” is the reason why women are seen as fragile and therefore exempted from certain obligations; they are not suited to deal with some social hardships. Not because they are denied rights, she says, but there are special obligations which are only taken from their shoulders as e.g. judgment, *jihād* and testimony/martyrdom (*shahādat*). As these are mere obligations and no rights religion does not deny women any rights<sup>70</sup>.

She substantiates her claim that physical differences, e.g. rooted in the female and male hormones, create psychological differences. Hormones and especially estrogen influence the feeling and behavior of women. The male hormone testosterone makes men able for heavier work, at the same time more aggressive and quarrelsome.<sup>71</sup> As there are physical as well as psychological differences between men and women which even (some of the) feminists do not deny we do have to take them into consideration in different dimensions of the live of the individual and the family and society. From the position of religion these differences cannot be regarded as defects (*naqṣ*). She regrets that the international Conventions do not pay attention to this and quotes Quran 30:30:

[...] No change should there be in the creation of Allah. That is the correct religion [...]

To summarize: whereas Islam accepts equality (*tasāwī*), but what is in the Convention is not (Islamic) equality, she concludes that the concept of gender relation in the Convention is to be identified with the term *tashāboh*/similarity. She explains this by arguing that the Convention does not take into consideration the differences between the sexes. However, she presents no evidence for this claim. Even the Persian translation in the annex of her book uses the terms *barābarī/tasāwī*. Just like Moṭāhhārī she twists the terminology. What is in normal use of a) dictionaries b) the language in the Convention and c) even the Persian translation of the Convention in

68 ‘Alāsvand 2004, 38.

69 Ibid.

70 Ibid.

71 Ibid.: 40.

her own book translated with *tasāvī* becomes *tashāboh*. The second “twist” is the one between “rights” and “obligations”. Defining judgment, i.e. the office of a judge, as well as others as “obligations” and obligations being too hard for women, so that they have to be taken “from their shoulders” she twists rights to obligations and thereby denies those rights to women.

#### Mawlāverdī

Mawlāverdī is well aware that the concept of “equality” (Pers. *barābarī*) is one of the main points of critique of the opponents of the ratification of the Convention<sup>72</sup> and begins her article by summarizing the arguments of the CEDAW’s opponents: They see the “spirit” of the Convention in absolute “similarity” (*tashāboh-e muṭlaq*) of woman and man and against the pattern of proportion/suitability (*tanāsob*) of woman and man. God gave man and woman different talents, so they should have different rights and duties.<sup>73</sup> On the other hand, this form of equality (*barābarī*) has many disadvantages for society, is contrary to the welfare (*maṣāleḥ*) of women, neglects woman’s role as mother and wife, the cohesion of the family, etc. Consequences include the increased marriage age, etc. which are incompatible with Islam.<sup>74</sup> Mawlāverdī quotes ‘Alāsvand<sup>75</sup> in her praise of the Islamic system and woman’s role within it. Islam gives answers in a reasonable way (*ṭarz-e ma‘qūlī*) to natural requirements and desires; the husband who has to pay maintenance to his wife is obliged to act as the head of the family (*qiyām*) whereas the preferred space of female activity is the private sphere and the home.<sup>76</sup> Against this it has been argued – and in what follows becomes evident that this is her own position, too – that the construction of the family is contingent on history. She criticizes Moṭahharī for adopting the position of traditional scholars who, based on the family structure at the beginning of Islam considered the laws regarding the family as eternal and unchangeable, whereas the development of Muslim society in recent times must be taken into consideration. Historical inequality of women should be ended and women should be given equal rights without endangering the family structure.<sup>77</sup>

The aim of the Convention, she now points out, is not to bring about indisputable equality (*barābarī*) or absolute and mathematical equality (*tasāvī-ye muṭlaq va-riyāzī*), but – as seen in Article 1 – to abolish discrimination. She refers to line one of Article 1, the definition of “discrimination” (*tab‘īd*) against women as “any distinction, exclusion, restriction on the basis of sex (*jensiyyat*) which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedom in certain areas”. With this quotation of Article 1 of

72 Mawlāverdī 1381/2002: 133.

73 Ibid.

74 Ibid.: 134.

75 However, not her book which I used here, because her article was published before ‘Alāsvand wrote her book.

76 Ibid.

77 Ibid.: 134–135.

the Convention Mawlāverdī points to the main areas of discrimination: the rights and freedoms in the political, economic, social, cultural, civil or any other field.<sup>78,79</sup> She also points to other articles: Article 6, 10 and 12<sup>80</sup> which take gender differences into account. Whereas in Article 6 the states declare to take all measures to suppress prostitution and traffic in women, in Article 10 they promise to create equal opportunities in education. Mawlāverdī does not make sufficiently clear what the point of her quotation is with regard to this article, but Article 12 refers to health-care and special options for women during pregnancy, confinement and the post-natal period as well as adequate nutrition during pregnancy and lactation; it surely corroborates her argument that the Convention here differentiates between the sexes and gives special rights to women.<sup>81</sup>

Equality of sexes (*barābarī-ye jensiyyati*) means for her: equal chances, equal standing, just conditions; physical, mental and intellectual abilities have not to be taken into account, as well as economic or social position. Non-equality has its roots in history, and, caused by patriarchal structures, exists even in developed societies.<sup>82</sup> As she points out, this Convention was written under the influence of the post-modern feminism of the 1970s, the slogan of which was equality (*tasāvī*) of women and men despite biological differences.<sup>83</sup> The aim was to get equal basic rights for men and women knowing that biological difference exists. The question is, how equality in the area of civil, political cultural, social, and economic rights can be implemented in spite of these natural and biological differences. Or, she asks rhetorically: should this difference between man and woman result in the superiority of one over the other? To this ‘Alāsvand would have of course answered in the affirmative. According to Mawlāverdī, however, it is a fact that discrimination against women does not result from natural or biological conditions but from discriminating social orders as well as social injustice which has to be stopped. It becomes evident that it does not contradict the Convention to give women in some fields special concessions (*emtiyāz*). She repeats over and over that women cannot be denied equal rights to men because they are women. Both are human beings with honor and dignity (*ḥaiṯhiyyat va-karāmat*) and their human rights.<sup>84</sup> The “spirit” (*rūḥ*) of this and other conventions is to give individuals their natural rights (*ḥoqūq-e tabī‘ī*). As the spirit of the Convention is to guarantee human rights for all this is in accordance with many Islamic rules and regulations. Some try to place Islam in opposition to the justice-seeking spirit of the Convention, but Islam is a proponent of justice and equality.

78 Mawlāverdī, *Barāberī*: 3.

79 <http://www.un.org/womenwatch/daw/cedaw/text/eConvention.htm> accessed July 12, 2014.

80 Mawlāverdī 1381/2002: 136.

81 *Ibid.*: 136.

82 Mawlāverdī 1383/2004: 213.

83 Mawlāverdī speaks nowhere of “psychological” differences, she only refers to biological differences between men and women.

84 Mawlāverdī 1381/2002: 135.

To summarize, it becomes evident that both scholars see “equality” as an important concept of the Convention and the discourse in Iran. Neither of them denies differences between the sexes in biology but they differ in its definition and consequences:

- Mawlāverdī and ‘Alāsvand focus on different positions on the Convention, summarizing the opponent’s and the supporter’s arguments and then explaining their own point of view. ‘Alāsvand, however, speaks of “we”, with reference to Iran, thus “nationalizing” her argument and “othering” every other possible voice.
- The principal difference between Mawlāverdī and ‘Alāsvand with regard to content can be seen in the fact that Mawlāverdī sees human rights as compatible with Islam and cites a “spirit” of the Convention which is in accordance with Islam whereas ‘Alāsvand sees a principal incompatibility.
- ‘Alāsvand argues that what is meant in the Convention is not equality/*tasāwī* but similarity/*tashāboh* which is – with Moṭahhārī – negative and seen as absolutely incompatible with Islam. It means “absolute” equality and does not take note of the obvious biological and psychological differences between men and women. She thus twists the terminology and what is used normally as “equality” in the Convention’s translation becomes “similarity”, *tashāboh*, because she argues (but does not convincingly prove) that “similarity” is the concept enshrined in the Convention. Obviously she takes Moṭahhārī’s argument that “Islam is for equality and against similarity” as starting point. As she cannot accept the concept of gender equality in the framework of the Convention she has to rename it “similarity”.
- Mawlāverdī on the other hand sticks to the “usual” translation of “equality” in the Convention and criticizes Moṭahhārī, albeit not explicitly his concept of *tashāboh* but more generally his unhistorical and static use of a concept of family and gender roles. Whereas Mawlāverdī’s concept of “equality”(*tasāwī*) includes differences between the sexes though only with regard to biology, ‘Alāsvand also deals extensively and with much reference to research in the area of biological differences in emotions and characters resulting from physical differences, and mentions differences in the area of psychology.
- Mawlāverdī argues that “equality” (or “similarity”) is not the most important topic of the Convention, but the prohibition of discrimination on the basis of sex dealt with in Article 1. Important in the Convention is not so much the question what exactly equality is and whether or not there are (biological) differences between the sexes (which are biologically seen in pregnancy and lactation, emotional differences are not mentioned, and are alluded to e.g. in the articles 6, 10, 12) but that it is not allowed to discriminate against women on the basis of their sex because men and women are equally bearers of human rights.
- She thus argues for inherent equal rights of men and women, whereas ‘Alāsvand spends much time in explaining and justifying the biological and psychological differences between men and women – to conclude that these differences of the

sexes have to have the consequence of different rights of women and men. Furthermore, she differentiates between “rights” and “obligations”, arguing that because of their physical constitution women are not able to take over certain “obligations” – as *jihād* and jurisdiction. With this clever distinction she now can go on to “take” certain “obligations” “from women’s shoulders” to make life easier. As these obligations are no rights, women are not denied rights. With this euphemistic wording she conceals effectively the denial of rights to women, which she renames as “responsibility” (Pers. *mas’ūliyyat*) and/or “obligation” (Pers. *taklīf*), a religious term normally connected to religious duties.

Biological arguments taken as a basis for denying women rights and positions in society are age-old and gained special “scientific” importance in 19<sup>th</sup>-century Europe. As Schwarz has shown, the discourse in late Victorian and Edwardian England biology laid down that women were ruled by their unruly emotions, were less likely to listen to the voice of reason and therefore a potential danger which had to be contained. She quotes Henry Maudsley:

They cannot choose but to be women; cannot rebel successfully against the tyranny of their organization: this is (...) the plain statement of a physiological fact.<sup>85</sup>

Darwin assumed the male brain to be more highly evolved than the female brain and described woman’s constitution including emotional characteristics such as intuition, imitation and irritability as similar to that of the “lower race”. The age-old notion of women being more easily dominated by extreme emotions – based on a gendered dichotomy of male/rational and female/emotional – was incorporated in 19<sup>th</sup> century England into the new scientific discourse, in this way acquiring the appearance of scientific authority in an age that contemporaries celebrated as scientific.<sup>86</sup> It is exactly this discourse which is taken up by ‘Alāsvand with the intention to prove on the basis of “clear” “scientific” results – sided with arguments of Quran – woman’s inferiority.

### 3.3 Feminism

A second important concept which is used as an argument is “feminism”, which is not translated into Persian – in Arabic there exists e.g. *nisā’iyya* as a neologism for this concept.

‘Alāsvand

‘Alāsvand deals with the history of the word “feminism” as a new creation in the 19<sup>th</sup> century in French, stating that fighting for women’s education for example has a long history. She repeats very roughly and not always accurately the common classi-

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<sup>85</sup> Schwarz 1997: 147.

<sup>86</sup> Ibid.: 145.

fiction of feminism into three waves and what is meant by this.<sup>87,88</sup> Starting from the beginning of the 19<sup>th</sup> century and lasting until the end of the First World War, she describes the first wave as a phase of development of liberal, Marxist and socialist feminism. She names Mary Wollstonecraft (1759–1797) as the representative of liberal feminism, whom she describes as a reformer and not a revolutionary. According to ‘Alāsvand Wollstonecraft believed in differences of the sexes but was opposed to inequality in family and society. She also deals with the first feminist movements in the beginning of the 20<sup>th</sup> century. Women used the situation caused by the first and second world wars and the absence of men to take men’s place as workers e.g. in industry and the “gender difference between women and men was forgotten”<sup>89</sup>. In the second wave of feminism beginning in the 1960s two important lines of feminist thought came into being: radical and liberal feminism.<sup>90</sup> She describes radical feminists as fighting against the patriarchal structure of society to overcome the traditional idea of monogamic (*tak hamsary*) marriage and thereby rejecting the concept of motherhood. The representatives of this group authorized abortion, all kinds of sexual satisfaction including homosexuality (*ham-jens-gerā’ī*). She presents Simone de Beauvoir (1908–1986) as a representative of this view.

She describes two other trends, one of which is the “revival of motherhood, whose representatives saw feminist ideas as compatible with the family and motherhood. She mentions Germaine Greer (1939-) especially her book “Sex and Destiny” in which she revised some of her main former thoughts and radical ideas.<sup>91</sup> The second group fought for female superiority above males and was also in opposition to liberal feminism which stood for equal rights between men and women.

Feminism in post-modernity believes that all schools of thought – liberalism, Marxism, feminism – which claim to know reality are faulty. Feminism can thus be criticized because there can be no single definition of female identity; race, class, gender and culture, etc. are components of identity as well.

Feminism – and here ‘Alāsvand seems to include all kinds of feminism – tries to give the answer to three questions: (1) How do we define women? (2) What are the reasons for this position? (3) Which solution for the change of this position do we suggest? All feminists are against oppression (*forūdastī*). She explains that all feminist schools stick to the individualism of women. She harshly criticizes the fact that all forms of feminism give priority to women’s freedom and honor (*‘ezzat va-sharaf*) as individuals rather than to their social duties, obligations to the family and their country. Some radical feminists even vote for the right of self-determination

87 ‘Alāsvand 2004: 9–18.

88 See Wikipedia <http://en.wikipedia.org/wiki/Feminism> accessed July 12, 2014: normally Charles Fourier (d. 1837) is mentioned as the first person to have coined the word “feminism”. She does not give the most important names and definitions and is not very accurate especially when dealing with the newest developments of gender theory.

89 ‘Alāsvand 2004: 10.

90 Ibid.: 11.

91 Ibid.: 11–12.



(*tasalloṭ-e zanān bar khwishtan*). Especially radical feminists and even liberal feminists think that women as independent human beings have the right to live according to their instincts. They even claim the right to abortion.<sup>92</sup> ‘Alāsvand complains that the question of self-determination has lead Western women so far that they consider the birth control pill to be progress whereas it would be more important to get the right to vote.<sup>93</sup> It therefore becomes evident that the feminist movement’s most important principle is independence of the individual (*esteqlāl-e fardī*). Even those feminists who believe in the family and a woman’s role as a mother see women as independent in the family and recognize or accept a certain competition between her rights and those of the family. ‘Alāsvand sees this as a contradiction to the Islamic view in which women and men equally have a soul (*rūḥ*) in which women are considered at the same time individuals and members of a family and society and women’s independence is firmly rooted in family and society.<sup>94</sup> This position prevents selfishness. Furthermore, in religion the relationship of the individual to God has to be taken into consideration and the religious concept of the soul is not gendered.<sup>95</sup>

‘Alāsvand seems to be well aware of the concept of gender as a social construct and explains the difference between biological sex (Pers. *jens*) and gender as a social construct (pers. *jensiyyat*). Feminists argue, she explains, that that these differences should not influence the order of the family or society.<sup>96</sup> Some feminists, she continues, deny even these biological differences, a position which she cannot accept because of opposing “scientific findings”<sup>97</sup>. As mentioned above she gives a whole list of physical and psychological differences between men and women relying on what she calls the “achievement” (*dastāward*) of the science of biology.<sup>98</sup>

Her main point of criticism therefore can be seen in the concept of individualism, individual independence and independent personality, and the individuality of women which have priority over all other social and legal aspects.<sup>99</sup> This brings feminism into open opposition with the institution of the family and other social institutions. She also criticizes the “secularism” and “liberalism” forced on the world from Western culture, not with particular regard to feminism but in general.<sup>100</sup>

In these two points, as already mentioned, ‘Alāsvand comes very close to the arguments of Abu-Lughod: the family which is in a normative way is seen as of higher value than individual rights and freedom and the “West’s” dominance with regard to these concepts.

92 ‘Alāsvand 2004: 15.

93 Ibid.: 15.

94 Ibid.: 17–18.

95 Ibid.: 18.

96 Ibid.: 36.

97 Ibid.: 38–39.

98 Ibid.: 39–40.

99 ‘Alāsvand 2004: 15–16.

100 Ibid.: 39.

With regard to the Convention she sees a feminist influence in Article 5 (2), citing here the Convention's wording "maternity as a social function". She explains that this is influenced by feminists. Whereas motherhood was usually seen as an important task, as a domain of great responsibility which women were expected to bear alone, feminists believe, according to 'Alāsvand, that it was wrongfully described as delightful and joyful. She calls this talk "null/void" (*bāṭel*) and in opposition to all scientific research. For her it is evident that the fact of being a woman is of course connected to motherhood.<sup>101</sup> She overlooks that the Convention's text – which of course does not refer to those "feminist talks" – here explicitly refers to motherhood and makes it a physical marker between men and women connected to special rights for women in this situation. This is actually in accordance with her arguments. Also she cannot and does not want to accept obligations towards children as the "common responsibility of men and women" as stated in the Convention as she would see them as "normally" connected to motherhood.<sup>102</sup>

#### Mawlāverdī

Mawlāverdī, unlike 'Alāsvand, does not deal with feminism explicitly but refers to it only implicitly, and her definition of the feminist groups is even more blurred than 'Alāsvand's. She argues that the Convention has been written under the influence of post-modern feminism without defining what this had been in the beginning of the 1970s. As stated above, it contains equal rights for men and women despite physical differences.<sup>103</sup> Nowhere are differences between the sexes denied, even by the "modernist" feminists<sup>104</sup> or the "authoritarian" (*eqtedārgerā*) feminists who do not defend complete similarity of men and women. It is principally not possible to ignore freedom and human rights under the pretext of race, age, religion, sex.<sup>105</sup> She poses the question that today, where we watch the three waves of feminism in Iran (the "proof-seeking", "seeking equality" and "authoritarian") and are aware of the non-transparency of the feminist sphere, should not the supporters of Islamic women's rights find the appropriate answers to the questions women face today?<sup>106</sup> The answers to this question will correspond to the position of the first-wave-feminism. And: Should the danger of the third-wave-feminists bring us in to oppose all of it?

Both 'Alāsvand and Mawlāverdī would accept the arguments of the first and second wave of feminism but do not agree with the positions of the third wave, that of post-modern feminism. The adjectives modern, post-modern, radical and liberal are not

101 Ibid.: 29–30.

102 Ibid.: 30.

103 Mawlāverdī, Barābarī: 3.

104 Mawlāverdī 1381/2002: 138. Mawlāverdī only implicitly refers to the constructional character of gender and does not take modern trends of gender studies into account.

105 Mawlāverdī, Barāberī: 4.

106 Mawlāverdī 1381/2002: 138–139.

deliberately used. It is obvious that both consider feminism as something strange and new to Iran, as stemming from a Western context, and that post-modern feminism in particular is in contradiction to Islamic values. This points to a powerful discourse that discredits “feminism” as something strange, something that does not belong to Islamic history.

Margot Badran approaches the of problem of what feminism is with a broader definition. She writes:

... feminism is broadly construed to include an understanding that women have suffered forms of subordination or oppression because of their sex, and an advocacy of ways to overcome them to achieve better lives for women, and for men, within the family and society.<sup>107</sup>

She uses this broad definition to be all-inclusive without the intention of suggesting a monolithic feminism. She argues that Muslim women have generated two major feminist paradigms, which they have referred to as “secular feminism” and “Islamic feminism”. But these have never been hermetic entities. Nor, concomitantly, have those known as “secular feminists” and “Islamic feminists” operated strictly within the separate frameworks that their designations might suggest.<sup>108</sup>

In her book “Women, Islamism and the State” in Egypt, Azza Karam refers to an equally broad definition but constructs three ideal-types of feminists: secular, Muslim and Islamist feminists. Without going into detail here, it can be said that secular feminism in the sense of focusing on the individual human rights of men and women without any relation to religious concepts is not very common in the Muslim world. In Iran, as stated above, there is no discourse on a secular interpretation of human rights, the discourse on human rights is always based on Islamic arguments. Whereas roughly speaking Muslim feminists support the idea of gender equality as rooted in Islamic sources, Islamist feminists (who by the way would never call themselves feminists) argue that differences in biology and psyche result in different rights and duties within society.<sup>109</sup> According to this concept, Mawlāverdi would be counted as a Muslim feminist but it is doubtful that she would ever call herself such. ‘Alāsvand would be an Islamist thinker, but as she does not even try to opt for more female rights or agency she could never be called a feminist. Anyway, the ideas ‘Alāsvand proposes – non-equality because of biological and psychological differences between the sexes etc. – are neither new nor special to Iran.

In her article “Feminism in an Islamic Republic”, Najmabadi analyzes the discourses on “feminism” and, of the 1990s, states that feminism was seen in connection with “individualism” and rejected as “un-Islamic”.<sup>110</sup> However, she also highlights the important role played by the journal *Zanān*<sup>111</sup>, which first appeared in

107 Badran 2011: 18.

108 Ibid.: 2–3.

109 Schneider 2014: 173–179.

110 Najmabadi 1998.

111 Ibid.: 63–65, 72–73.

1992 and was closed down in 2008. At least in this journal the accepted connections between differences-in-creation and women's rights and social responsibility as developed by 'Alāsvand were overturned.<sup>112</sup> Najmabadi goes so far to state that Zanān broke down the dichotomy between secular and Islamic women in Iran. However, if this is true for the widely-read and acclaimed journal Zanān it is not true for the legal discourse in the Islamic Republic as a whole, as is clear in the arguments of 'Alāsvand. Furthermore, the question of how women could argue on the basis of "secularism" is not easily answered. At least at the end of the first decade of the 21<sup>st</sup> century it was not longer possible to argue on the basis of secularism or, more concretely, on the basis of international human rights.<sup>113</sup>

Mehrangīz Kār, an Iranian woman who would perhaps call herself a feminist, divides female activists into two groups: conformists and non-conformists. As the gender-concept of the Iranian state can surely be roughly called Islamic<sup>114</sup> one could call 'Alāsvand and Mawlāverdī protagonists of these two positions, 'Alāsvand being conformist, and Mawlāverdī non-conformist. But how can we interpret the fact that *both* women were given high political positions under Rohani? This shows on the one hand how problematic many of these categorizations are and second that antagonistic positions are not only present but are simultaneously perhaps also promoted possibly by different actors or players in the Islamic Republic.

### 3.4 Islam

'Alāsvand

'Alāsvand<sup>115</sup> deals extensively with the incompatibility of Islam, or more exactly, *feqh-e Eslāmī* and *dīn-e Eslāmī*, and the Convention. She argues that there are common obligations and restrictions which apply to the whole of Islam which led the Muslim states to either not sign the Convention or sign it with reservations. She looks at these points while focusing on comparative *feqh*, taking also the Sunnī schools of law into consideration alongside Shiite *feqh*. According to her two points need to be dealt with in advance, first: absolute equality or similarity (see 3.2) and second: the fact that the Quran is an important but not the only source of Islamic religion and jurisprudence.<sup>116</sup> She discusses several areas of family and penal law, including the age of marriage and divorce regulations, etc. – all of which are areas where classical law contradicts international law and gender equality as defined in the Convention.<sup>117</sup> Here I will concentrate only on one point: the question of polygyny.

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112 Ibid.: 67.

113 See: Schneider 2010: 404–405, in the discussion about the new Family Draft Law in 2008 publicly no voice was raised for international human rights, e.g. for the CEDAW.

114 Paidar 1997: 303–355.

115 'Alāsvand 2004: 53–88.

116 'Alāsvand 2004: 53–55.

117 Schneider 2014: 88–91.

The differences between men and women as mentioned above are confirmed in the Quran. She invokes the Quranic verse 4:3 on polygamy, according to which – taking “justice” (*‘adālat*) into account – a man can be married to up to four women at the same time. She quotes Quran 4:3 in Arabic and Persian translation. She argues that this does not apply to women while at the same time every relation besides legal marriage is forbidden for women and is equally a crime called *zinā*. Polygyny is for her the solution to problems which arise e.g. from war when there is a lack of men. She praises Quranic regulation in its “justice” to protect the first wife against harm (*žarar*). However, this justice refers to external regulations such as giving the same amount of maintenance to all wives, not for example to feelings like love.

In the end she states that these different rights of men and women with regard to polygamy is unanimously accepted by “Islam” because it is rooted in the Quran and in several traditions. It is incompatible with the articles 1 and 16 of the Convention. The right to practice polygamy as in the Quran is also anchored in Iranian national legislation to which she is also committed.<sup>118</sup>

#### Mawlāverdi

As we have seen, Mawlāverdi is convinced that Islam and human rights can be brought together. Her principal argument is that nobody should be deprived of her/his rights because of her/his sex. Already the title of her article “goftemān mašlahatgerā va-CEDAW” – meaning “discourse of acting in the interest of public welfare and the CEDAW” – shows Mawlāverdi’s different approach. She is not focusing on *feqh* of the four Sunnī schools of law or the Shiites. Her goal is not to point to common “Islamic” dogmas which, according to Alāsvand, are based on Quranic rulings such as polygyny and lead her to the opinion that the CEDAW cannot be accepted. Instead, Mawlāverdi focuses on modern developments of *feqh*. She deals with the creation of the Expediency Council in 1988 as the result of a deadlock between the Parliament – the legislative body – and the Council of Guardians. This body examines the laws passed by the Parliament for compatibility with the constitution and with sharia. She describes the Expediency Council more or less as a strategic organ to resolve deadlock and concludes that both institutions have more or less the same competence as the Expediency Council does not have a monopoly in interpreting *feqh* and is unable to legislate against sharia.<sup>119</sup> In this context she quotes Moṭahhārī – the gender-theoretician mentioned above – with an interesting comment: When rationalism and public welfare are criteria for legislation in an Islamic society, this is Islamic.<sup>120</sup> But if inflexibility prevails over rationalism there is no place for Islam in society. Protecting public welfare might sometimes go so far as to lead to the abrogation of a prohibition (*ḥukm-e ḥarāmī*), rendering it allowed (*ḥalāl*) or obligatory (*wājib*). The understanding of religion is bound to time and

118 Alāsvand 2008: 66.

119 Mawlāverdi 1383/2004: 205–207, see 207.

120 Ibid.: 206–7.

space and the role of women in particular has to be seen in this context. She explains that this is not in opposition to religion. One way is to look for Quranic verses, *ḥadīth*, and traditions that have not been looked at, another is to take *maṣlahat* into consideration. With *maṣlahat* the requirements of time and place can be taken into consideration. Can we not, she asks, be religious and give women and men the same rights?<sup>121</sup> Why should there be differences at the expense of women only to the benefit of men?

Mawlāverdī quotes many important scholars in Islamic history to show that interpretation of the law changes and has to change according to time and space. According to Imam Khomeini *ijtihād* is dynamic. She quotes Āyatollāh Jannatī who argues that *ijtihād* is an instrument that harmonizes *feqh* with life.<sup>122</sup> She turns to Egypt and Qāsim Amīn (1863–1908), the scholar who is often seen as the first feminist. Amīn advocated that women have to be seen as protected persons who have the same rights and duties as men. For him the root of the problem lies not in religion but in tradition. He was, she argues, convinced that it would be possible to give women their deserved place in society.<sup>123</sup> Furthermore, she points to Muhammad ‘Abdūh, also Egyptian, whose aim was not, as she explains, to imitate the West to find ways out of what he saw as the decay of the Islamic world. She mentions Muḥammad Jawād Mughniyyah (1872–1979)<sup>124</sup>, a Shiite scholar from Lebanon who was convinced that the religious rituals (*‘ebādāt*) are not explicable, but that rules and laws can be comprehended and that the jurist has to discover indicators.<sup>125</sup> Mawlāverdī states that in the area of ritual one has to rely on the texts, but in the area of human relations (*mo‘āmalāt*) reasonable *maṣlahat* must be taken into account. Finally she refers to Khātāmī, Iranian President from 1997–2005 who coined the idea that *feqh* had to be avant-gard (*pīštāz*). Again (see also 3.5), she points to the idea of human rights and gender equality as a universal idea that states must take into consideration. While it is necessary to adhere to cultural and religious identity, integration into the global community is also imperative so as not to miss the train. These values are undeniable. Mawlāverdī considers the differentiation between men and women to be a consequence of worldwide patriarchal society and concludes: It is a fact that true Islam (*Eslām-e vāqe‘ī*) is in complete agreement with the standards of international human rights.<sup>126</sup> And:

If there seems to be sometimes a conflict (*ta‘ārož*), one should cast doubt on the reading of Islam or the understanding of human rights.<sup>127</sup>

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121 Ibid.: 211.

122 Ibid.: 212.

123 Ibid.

124 <http://islamtimes.org/vdcayenu.49nyi1gtk4.html>, accessed July 12, 2014.

125 Ibid.: 213.

126 Mawlāverdī 1383/2004: 214.

127 Ibid.

Dogmatism is not scientific, she argues. There are different interpretations of *feqh* as well as of human rights but the principle is human dignity according to which texts must be interpreted. She repeats that nobody can be deprived of his/her rights on the basis of gender<sup>128</sup>.

To summarize, both scholars refer to Islam and are eager to show that Islam is the source for their respective positions on the CEDAW. ‘Alāsvand sticks more to the classical *feqh* and wants to give the impression that other interpretations are not acceptable; she refers to no new approaches in Quranic interpretation. On the other hand, Mawlāverdī is well aware of these different approaches, and to an even greater extent to the fact that Islamic texts as well as human rights texts such as the Convention are open to human interpretation. Logically, she refers to the spirit of Islam – which is for her compatible with human rights – and to several historical and contemporary scholars in Iran and other Muslim states who opted for a “dynamic” interpretation. She does not go into detail concerning conflicting views between a classical or traditional interpretation of gender roles and modern approaches towards this topic. Nor does she refer to legislation in other Muslim states. Instead she takes recourse to Iranians. In her article she often refers to “the Imam”, meaning Khomeini, but also to President Khātāmī, the hope of the reformers and President of Iran at the time of writing.

### 3.5 Strategic arguments in favor of or against the ratification of the CEDAW

‘Alāsvand

Some supporters of the ratification of the Convention, whom ‘Alāsvand mentions very briefly, vote for its ratification with reservations, something she is against because these reservations can be cancelled. Whether or not the reservation is void (*fāsid*) is, as she explains in a footnote<sup>129</sup>, a legal question.<sup>130</sup> Furthermore, international pressure under which reservations are often withdrawn has to be taken into consideration.<sup>131</sup> In chapter seven she presents several arguments against the ratification and rejecting the arguments supporting the Convention: (1) the pressure exerted by the international community; (2) the alleged impossibility of acting in the realm

128 Ibid.: 215.

129 ‘Alāsvand 2004: 26, footnote 2.

130 The issue is admissibility, in particular the legal consequences of entering an inadmissible reservation in the ratification of a human rights covenant. A sharia-based reservation is an example of an inadmissible reservation because it undermines the fundamental concept of the CEDAW, i.e. the elimination of discrimination against women. The reservation contravenes the covenant’s very purpose (Art. 19ff. Vienna Convention on the Law of Treaties). Art. 28 of the CEDAW itself prohibits such reservations. There is a debate in the field of human rights on this issue that has been developing the stance that these types of inadmissible reservations have no legal impact to the effect that they do not limit the said state’s obligation to comply with the covenant. see: <http://www1.umn.edu/humanrts/gencomm/hrcom24.htm>. I would like to thank Christine Langenfeld for this comment.

131 ‘Alāsvand, 2004: 26.

of the international community without ratifying the Convention; (3) the necessity of change to national legislation; (4) the question of whether the Convention will, or has already become an international legal custom (*jus cogens*).<sup>132</sup> With regard to these points she argues as follows:

1. Iran is already criticized for gender discriminatory laws, a fact that will not change upon ratification because this would be accompanied by reservations (Pers. *shurūt*). If Iran ratifies it is then obliged to provide regular reports and there is a push towards international standards that are in opposition to Islam.
2. To act in the world without ratifying the CEDAW is not impossible. If Iran had a seat in the CEDAW committee it would, according to supporters, be able to influence the discussion about Islam and to correct misunderstandings about Iranian and Islamic law in the UN. Rejecting this, 'Alāsvand states that in similar situations such as when Iran was chair of the OIC, Iran has been unable to use this position as an instrument. It is true that the world needs the voice of Islam – but this can be done elsewhere.
3. With regard to national legislation, she describes the position of supporters who argue that Iranian laws could develop on an Islamic basis for women under international influence. 'Alāsvand concedes that some laws might be discriminatory but that the constitution of Iran has principles which safeguard women's interests. She calls for legal development in Iran itself without foreign pressure.
4. The Convention and gender equality are not yet internationally binding customs, a *jus cogens*, as the jurists call it. 'Alāsvand<sup>133</sup> asks whether the Convention is already a legal custom binding for all countries, noting that many countries have signed it (albeit with reservations) whereas some did not ratify it at all. The Convention is not part of the international custom.<sup>134</sup> She connects this to the Islamic Republic's legal system and that of other Muslim states as well as to the declaration of Islamic human rights.

Her final statement is that Iran together with the OIC-states should develop an Islamic Charter for Women's Rights, concluding that the arguments in support of the CEDAW are weak and thus unconvincing. Finally she not only draws the conclusion the CEDAW should for no reason be ratified, but that its ratification would even be harmful to women.<sup>135</sup>

#### Mawlāverdi

Mawlāverdi's starting point is "*maṣlaḥat*" which can roughly be translated as "public welfare". She explains that governments or rulers in Islam have the possibility to use this theoretical tool in case of a conflict between sharia and a rule (*ḥokm*).<sup>136</sup> She

132 Ibid.: 133–145.

133 Ibid.: 126.

134 Ibid.: 128–129.

135 'Alāsvand 2004: 132–140.

136 Mawlāverdi 1383/2004: 203.



quotes Khomeini himself, who argued that the protection of the order of the state is the highest “*maṣlaḥat*” because it is a national *maṣlaḥat*. Even the most important Islamic rituals such as pilgrimage may be suspended if necessitated by national welfare because pilgrimage will not take place if the welfare of the Islamic Republic is in danger.<sup>137</sup> Mawlāverdī defines *maṣlaḥat* as a benefit that the lawgiver provides for his citizens by protecting religion, life, reason, offspring and property.

States supporting cultural relativism should be reminded that human rights are a worldwide accomplishment. Equality for gender – not equality of the sexes – giving them the same rights and fair chances without taking physical differences into consideration in all areas is included. Inequality is rooted in history, cultural thought and patriarchal structures especially in traditional societies but also in developed societies.<sup>138</sup> Women’s rights play an important role and the most important indicator is the ratification of the CEDAW. Iran is part of the global community. Other Muslim states have already ratified it. Moreover 1/6 of the convention drafting committee came from states with a Muslim population. Again referring to Khomeini who saw *maṣlaḥat* as a priority to protect the Islamic state, she broadly points to the fact that especially in Shiite Islam interpretations that favor gender equality are possible.<sup>139</sup>

She points to other Islamic countries which have signed the CEDAW. Mawlāverdī sees Iran in danger of being isolated on an international level because the state has yet to ratify the CEDAW.<sup>140</sup>

Starting with Risse/Sikkink’s “spiral-model” according to which international human rights Conventions are or are not introduced into national contexts and after having stated that Iran – not having ratified the CEDAW – is stuck on phase 2 of this model i.e. “denial”, I argue that the process of accepting or not accepting international human rights is more complex and necessitates a closer look. The national actors, ‘Alāsvand and Mawlāverdī, are well aware of the international pressure and the arguments in favour and against its ratification. So although the CEDAW is not ratified, the content of this international convention is hotly and controversially debated in an Iranian context.

#### 4. Conclusion

On the basis of what has been said, taking advantage of the so-called translational turn has been vital to understanding how categories “travel” and “arrive” and are then integrated into a national discourse. It is essential to look at these translations not only in a pragmatic way by checking which terms are chosen as equivalents in

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137 Ibid.: 203–204.

138 Ibid.: 213.

139 Ibid.: 215–216.

140 Ibid.: 215.

the other language in e.g. the official translation of a document or convention, but in a wider sense, as an analytical tool to understand the underlying political and social discourses which may lead to new legislation. The discussion about the ratification or non-ratification of the CEDAW focused on certain terms and concepts, of which gender-equality and/or “similarity”, the role of feminism in the drafting of the Convention and the question of compatibility with “Islam” or Islamic jurisprudence were examined as the most prominent. Hopefully it has been shown how eminently important it is to carefully examine the terminology and connected concepts. This analysis reveals that there are in fact interesting shifts and twists in meaning when discussed in Iran – as is surely also the case elsewhere. The normal understanding in the Convention’s text, the Arabic (and also the non-official Persian translation), and the dictionary, etc. of “equality” as gender equality now becomes for ‘Alāsvand “similarity”. On the other hand, the Arabo-persian *tasāvī* is used for an “Islamic” concept of “equality” which includes gender-unequal regulations as permission for polygyny. This discourse is influenced by Moṭahharī, who coined the statement “Islam is for equality but against similarity”. Similarity is understood and defined as the complete ignoring of differences between men and women and loaded with the negative connotations of “complete identicalness” and “making everything the same” which cannot, as is stated over and over again, be accepted in Islam. This is a common argument of both scholars.

It has not only become obvious that the discourse in Iran was deeply influenced by Moṭahharī’s critical attitude towards what he calls “similarity” and “absolute” equality, but that this is somehow a hegemonic discourse. ‘Alāsvand used and referred to it, reading it into the Convention’s text, but also Mawlāverdi in her more defensive style felt obliged to prove that “similarity” is NOT the Convention’s spirit and that absolute equality is not what matters.

According to the international discourse, the question whether or not there are biological differences or even psychological differences between the sexes plays no role, nowhere is this mentioned in the Convention. The argument is rather whether or not there are differences as sex cannot be used as reason for discrimination. So ‘Alāsvand’s lengthy explanations and arguments that there is scientific proof for the difference between men and women are not the point. To the point in is her conclusion, namely that these differences lead to different rights for men and women. After having interpreted the Convention’s term “equality” as “similarity”, she adds a twist in definition of “rights” as “obligations” which are “taken from women’s shoulders”. This implies an improvement for women where actually it is meant to hinder them from e.g. becoming judges. Like Mawlāverdi she draws on many arguments: biologicistic, psychologicistic (not Mawlāverdi) and religious, here referring especially to the Quran<sup>141</sup>, but excludes any social arguments<sup>142</sup>.

141 If presumed that English translations are being used in the international human rights dialogues, this can lead to confusion! If one uses the “normal” translation of *tasāvī* as “equality” on which to base a reading of Moṭahharī’s statement that Islam has nothing

The resulting question was whether the “translations” proposed by the two protagonists need to be seen as a revision of the letter and spirit of the Women’s Convention. This was presumed by Bachmann-Medick for the Islamic context, in particular with regard to the Islamic Human Rights Declaration (Cairo Declaration). With regard to ‘Alāsvand’s position, it is obvious that she revises the understanding of “equality”, setting the Convention’s terminus for equality against an Islamic term for equality that is at least used in the Arabic version of the Convention, stuffing it with a conservative “Islamic” content based on gender inequality. Thus for example the acceptance of polygyny while explicitly denying women the same right (to marry several men) is clearly incompatible with the Convention’s prohibition to discriminate against women. She is well aware of this and therefore argues frankly against its ratification. On the contrary, Mawlāverdī proposes that gender equality/*tasāvī* is possible in “(the) Islam”, her understanding would match the English “equality”-concept of the Convention. However she is cautious not to touch upon sensitive topics in detail and thus never mentions the question of polygyny but only generally points to a possible new interpretation of Quranic verses. She probably avoids this topic knowing that polygyny is firmly rooted in the Iranian legal system as in many other legal systems of Muslim states – with the exception only of Turkey and Tunisia – knowing that the abolishment of polygyny is a “taboo-topic” in legal discourse which cannot be touched upon. Just as many other Muslim states, in the case of ratification Iran would have to make certain reservations. On the other hand Mawlāverdī speaks out for the possibility of further developing Islamic law to adopt it to the changing conditions of life and adds that the spirit of Islam, or what she calls “true” Islam, is compatible with human rights.

Following Bachmann-Medick’s proposed terminology, it can be argued that Mawlāverdī “translates” into the Iranian cultural context, whereas ‘Alāsvand revises. Both ‘Alāsvand and Mawlāverdī’s systems of reference are equally religious – even if one comes to the conclusion of a potential acceptance of equality in Islamic law, and the other denies it. This also shows that the “arrival” of international legal norms is interwoven with cultural patterns and bound to the local discursive context. Mawlāverdī’s approach indicates that processes of inter-cultural norm-building as claimed by Bachmann-Medick<sup>143</sup> are possible, but the two contradictory opinions of ‘Alāsvand and Mawlāverdī also demonstrate the difficulty of these processes and how uncertain it is that they will ultimately influence legislation. For the time being this seems rather unlikely in Iran, even before the backdrop of the new appointments of both scholars to high political positions.

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against gender equality, one is lead to believe that the absolute legal equality as enshrined in the Convention is also given in this Islamic interpretation whereas it is, in fact, not. Again it becomes obvious how important it is to look at the accurate understanding and the interwoven cultural concepts.

142 see Schneider 2010.

143 Bachmann-Medick 2012: 339.

The final question was under which condition states “rest” on a certain position in the spiral model and how this is connected to the so called “principled ideas” mentioned by Risse/Sikkink. The discourse goes much further than debating the ratification of an international Convention. It is the reflection of an inner-Iranian discourse of different gender-models on the basis of “scientific” biological arguments as well as the question of the “right” interpretation of Islam as either compatible or incompatible with human rights and gender equality. Risse/Sikkink ask about the conditions under which the spiral model can be interrupted, resulting in the stabilization of the status quo of norm violation. We can observe this in the case of Iran: it consists of repression (= stage 1) and consistent denial (= stage 2) combined with more repression against those circles discussing the CEDAW and at the same time the development of “other competing principled ideas”. These “other competing principled ideas” – i.e. the Islamic concept of gender-difference – are promoted to confront concepts of international human rights. Supporting those concepts and ideas becomes not only a state sponsored concept but also the hegemonic discourse, defaming other concepts as “Western” and thus displacing or even eliminating them. These “other principled ideas” are very powerful in Iran. ‘Alāsvand offers a whole counter-model to what she – but also Abu-Lughod – consider to be the “imperialistic” “Western” concept of gender-roles and gender-equality. Whereas both ‘Alāsvand and Abu-Lughod, a conservative professor of the Islamic Republic and feminist scholar in the US, support the idea of “family” against individualism, ‘Alāsvand goes one step further by justifying different family roles by referring to biology and religious arguments. Both, ‘Alāsvand and Abu-Lughod, take the terminology, concepts and discourses of international human rights into consideration and explicitly refute them, but again ‘Alāsvand goes one step further in building up “our” concepts, a point which Abu-Lughod is missing.

Non-observance of the UN Conventions may lead to a process of “shaming” as argued by Risse/Sikkink, but if the hegemonic counter-model of gender relations is strong enough and has the state’s backing, the tables are turned: ‘Alāsvand sees no need whatsoever for Iran to be “ashamed”, but rather self-assured. She promotes the idea that it is necessary for Iran to work towards an independent declaration of Islamic human rights, a counter-model to the whole human rights catalogue. Shaming only functions on the basis of (implicit or explicit) acceptance of rules that have been violated. In the event that those rules are not accepted at all, if there are “other powerful principled ideas”, shaming is instead transformed into a self-confident representation of these principled ideas, whatever they may be.

‘Alāsvand teaches at the state-funded Madrasa of Zahra in Qom. One could therefore develop the hypothesis that she is part of a state-sponsored project to develop and promote an “Islamic answer” to international human rights and Western gender-role-models. From this point of view it is interesting to point to her rhetoric. Often she speaks of “us” and “them”. This is the creation of a hegemonic discourse through the promotion of special scholars and groups, giving them political posi-

tions. However, even when the hegemonic discourse is powered by the state, it is not possible to silence other “translations” completely.

## Bibliography and Websites

- Abu-Lughod, Lila (2009): Dialects of women’s empowerment: the international circuitry of the Arab Human Development Report 2003, in: *International Journal of Middle East Studies* 41, 83–103.
- ‘Alāsvand, Farībā (1382/2004): *Naqd-e konvānsiyūn-e raf‘-e kolliyyeh-ye eshkāl-e tab‘īze ‘alayhe zanān*. Qom: Enteshārāt-e markaz-e modiriyat-e howze-ye ‘elmiyye.
- Ali, Shaheen Sardar (2000): *Gender and human rights in Islam and international law: equal before Allah, unequal before man?* The Hague: Kluwer Law International.
- Bachmann-Medick, Doris (2012): Menschenrechte als Übersetzungsproblem, in: *Geschichte und Gesellschaft* 38, 331–359.
- Badran, Margot (2009): *Feminism in Islam – secular and religious*. Oxford: Oneworld Publications.
- Baer, Susanne (2011): Travelling concepts: substantive equality on the road, in: *Tulsa Law Review*, 101–121.
- Buskens, Leon (2003): Recent debates on Family Law reform in Morocco: Islamic law as politics in an emerging public sphere, in: *Islamic Law and Society* 10, 70–131.
- Emāmī, Karīm (1386/2008): *Farhang-e mo‘āšer-e Kīmīyā*. Tehran: *Farhang mo‘āšer*.
- Hafner-Burton, Emilie; Kiyoteru Tsutsui & John W. Meyer (2008): International human rights law and the politics of legitimation. repressive states and human rights treaties, in: *International Sociology* 23, 115–141
- Karam, Azza (1998): *Women, Islamism and the state: contemporary feminism in Egypt*. London, New York: Palgrave Macmillan.
- Mawlāverdi Shahīndokht (1381/2002): Eslām va-barābarī-ye zan va-mard, bā kodām qirā‘at, in: *Raihāne* 1.
- Mawlāverdi, Shahīndokht (1383/2004): Goftomān-e mašlahate-gerāw va-konvensiyūn-e raf‘-e kolliyyat-e eshkāl-e tab‘īd ‘alaihe zanān, in: *Raihāne* 6 .
- Mawlāverdi, Shahīndokht (without date): Barābarī-ye zan va-mard: tashāboh-e motlaq yā motafāvet amma mosāvī. copy.
- Merry, Sally Engle (2006): *Human rights & gender violence: translating international law into local justice*. Chicago: University of Chicago Press.
- Muṭahharī, Murtażā (no date): *The Qur’anic view of human position of women*. The International Scientific Educational Relations Department, Isfahan University, trans. by Hossein. No place.
- Muṭahharī, Murtażā (1357/1978): *Nezām-e hoqūq-e zan dar Eslām*. Tehran, Qom: Enteshārāt-e Šadrā.
- Najmabadi, Afsaneh (1998): Feminism in an Islamic Republic: “Years of hardship, years of growth”, in: Yvonne Yazbeck Haddad & John L. Esposito (eds.), *Islam, gender, and social change*: New York: Oxford University Press, 59–84.
- Najmabadi, Afsaneh (2006): Beyond the Americas: Are gender and sexuality useful categories of historical analysis?, in: *Journal of Women’s History* 18, 11–21.
- Osanloo, Arzoo (2009): *The politics of women’s rights in Iran*. Princeton: University Press Group.

- Osanloo, Arzoo (2012): What a Focus on “Family” means in the Islamic Republic of Iran, in: Maaïke Voorhoeve (ed.), *Family law in Islam: divorce, marriage and women in the Muslim world*. London, 51–76.
- Paidar, Parvin (1997): *Women and the political process in twentieth-century Iran*. Cambridge: Cambridge University Press.
- Risse, Thomas & Kathryn Sikkink (1999): The socialization of international human rights norms into domestic practices, introduction, in: Thomas Risse, Stephen C. Ropp, Kathryn Sikkink (eds), *The power of human rights: international norms and domestic change*. New York: Cambridge University Press, 1–38.
- Schneider, Irene (2010): Civil society and legislation: development of the human rights situation in Iran 2008, in: H. Elliesie (ed.), *Beiträge zum Islamischen Recht VII, Islam und Menschenrechte*. Frankfurt a. M., 387–414.
- Schneider, Irene (2014): *Women in the Islamic world. From earliest time to the Arab Spring*. Princeton: Markus Wiener Publishers.
- Schwarz, Angela (1997): “They cannot choose but to be women.” Stereotypes of femininity and ideal of womanliness in late victorian and edwardian Britain, in: Ulrike Walton-Jordan & Wolfram Kaiser (eds.), *Political reform in Britain, 1886–1996: themes ideas, policies*. Bochum: N. Brockmeyer, 131–150.
- Welchman, Lynn (2003): In the interim: civil society, the Shar‘ī Judiciary and Palestinian Personal Status Law in the transitional period, in: *Islamic Law and Society* 34, 34–69.

‘Alāsvand:

[http://en.wikipedia.org/wiki/Fariba\\_Alasvand](http://en.wikipedia.org/wiki/Fariba_Alasvand), accessed on July 12, 2014.

<http://feydus.ir/ShowNews-218293.aspx>, accessed on February 20, 2014.

[http://radio.irib.ir/persian/modulespage.aspx?modulename=radiomaaref\\_AExpert&id=180&PortalID=12](http://radio.irib.ir/persian/modulespage.aspx?modulename=radiomaaref_AExpert&id=180&PortalID=12), accessed on February 5, 2014

CEDAW:

<http://www.un.org/womenwatch/daw/cedaw/>, accessed on February 4, 2014.

Human Rights committee: general comments, see:

<http://www1.umn.edu/humanrts/gencomm/hrcom24.htm>, accessed on July 1, 2014.

Feminism:

<http://en.wikipedia.org/wiki/Feminism>, accessed on June 30, 2014.

Mawlaverdī:

[http://fa.wikipedia.org/wiki/%D8%B4%D9%87%DB%8C%D9%86%D8%AF%D8%AE%D8%AA\\_%D9%85%D9%88%D9%84%D8%A7%D9%88%D8%B1%D8%AF%DB%8C](http://fa.wikipedia.org/wiki/%D8%B4%D9%87%DB%8C%D9%86%D8%AF%D8%AE%D8%AA_%D9%85%D9%88%D9%84%D8%A7%D9%88%D8%B1%D8%AF%DB%8C)  
accessed on February 5, 2014.

Moṭahharī:

[http://en.wikipedia.org/wiki/Morteza\\_Motahhari](http://en.wikipedia.org/wiki/Morteza_Motahhari), accessed on February 5, 2014.

Muḥammad Jawād Mughniyyah:

<http://islamtimes.org/vdcayenu.49nyi1gk4.html>, accessed on February 12, 2014.