

## Lineage (Al-Nasab)

### Introduction

Every man is free within the limits of law and morality to say whatever he wants, and no one is entitled to stop him from doing so. But it is also not incumbent upon anyone to heed his statements or to consider them with respect. This is true irrespective of the speaker's station, whether high or low, venerable or otherwise, when his speech pertains to something outside the area of his specialty. Therefore, if an authority on law gives an opinion on a question of medicine or agriculture, it is not correct for a plaintiff to cite that opinion in support of his case, nor is it correct for a judge to base his judgment upon it.

Similarly, in the case of apostles, prophets, Imams and authorities on law, it is not obligatory upon anyone to believe their statements about issues concerning physical nature, such as the creation of the earth and the heavens, the distances between them, their origin and end, the elements of which they are composed and the forces therein. Sacred personalities at times explained a certain phenomenon in their capacity as a sacred authority; at other times they spoke about things in their personal capacity, like all other human beings who say what they conjecture or hear from others. Therefore, when they speak in their religious capacity, it is *wajib* upon us to listen to them and to obey them, as long as their religious decree does not exceed the limits of their specialty. But when they speak in their personal capacity, it is not *wajib* to follow them, because, here, their word is not regarding religion or things related to it. [1](#)

Thus a legislating authority, religious or secular, should limit itself to framing and expounding laws and regulations, with the aim of encouraging some acts and discouraging others, and explaining their causes and effects, approving one contract as binding together with its terms and conditions and invalidating another as not binding, and issues of this kind which safeguard the social order and ensure the common good.

But as regards natural phenomenon—such as the minimum or the maximum period of pregnancy—it is not within the domain of a lawgiver to either affirm or deny them or to make amendments. This is because the realities of nature and their causes are not alterable; they do not change due to the change of

conditions and passage of time in contrast with social laws, which are laid down, abrogated and modified by the lawgiver's will.

It is obvious that a lawgiver does make external realities of nature the subject of his laws, for instance, when he lays down that a child in the womb has the right to inherit from the father, that the birth of a child leads to an increase in the statutory allowance of the mother, or that when the wheat produce exceeds the consumption of farmers, the surplus should be taken into government custody, etc. But the explanation of natural phenomena relating to the subject of laws is the task of specialists. If there is anything in the statements of legal authorities explaining or defining such phenomena, it is nothing but an attestation of what specialists have reported. Therefore, when a judge refers an issue for specialist opinion and the fact is known showing the error of its description by legists, it is not *wajib* that their observations be followed, because we know with certainty that the legists have spoken regarding a phenomenon which pre-existed legislation; the intent of their remarks was to explain this pre-existing fact. Thus, when the opposite is proved, to follow their word would be equivalent to acting against their purpose and intention. The legists themselves name this kind of mistake "mistake in application"; it is similar to the mistake of a person who asks for a cup while pointing towards a stone resembling it.

After this introduction, we move on to our actual subject. As the child is the subject of many Islamic laws—such as its right to inherit from the father; the illegitimacy of its marriage with its sibling, the father's right to act as a guardian of its person and property until maturity; the *wajib* of its maintenance, and such other legal and moral rights—the legists are forced to determine the minimum and the maximum period of gestation. It is obvious that this issue pertains to the specialty of doctors of medicine not of law, and, therefore, it is not necessary that the word of legists be acted upon if it contradicts actual fact and reality. Because, in such circumstances, the logic of reality is stronger than their logic, and its proof prevails over their evidence. When the opinions of natural philosophers and physical scientists collapse before reality, it is more in order that the observations of those who are in no way connected with a particular field of specialization should collapse before facts. We mention here the views of different schools of Islamic law regarding the minimum and maximum period of gestation, on the assumption that one is not obliged to follow these views when they are not in consonance with facts.

## The Minimum Period of Gestation

The opinion of all the legal schools of Islam, both Sunni and Shi'i, is that the minimum gestation period is six months because the 15th verse of the Surat al-'Ahqaf expressly states that the gestation period (*muddat al-haml*) along with the period of suckling (*rida'ah*) is thirty months

وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا

and the 14th verse of the *Swat Luqman* states that the period of suckling is to be two complete years

## وَفَصَالُهُ فِي عَامَيْنِ

When two years are subtracted from thirty months, the remainder is six months, which is the minimum period of gestation. Modern medicine supports this view and the French legislature has also adopted it.

The following rules are derived from the above observations:

1. When within six months of her marriage a woman gives birth to a child, the child will not be attributed to her husband. Al-Shaykh al-Mufid and al-Shaykh al-Tusi—both Imami—and al-Shaykh Muhyi al-Din 'Abd al-Hamid of the Hanafi School have said that the choice of denying or accepting the child's parentage lies with the husband. If he accepts the child as his, the child shall be considered his legitimate offspring, and shall enjoy all the rights of a legitimate child. Similarly, the father shall have all those powers over it as over the other legitimate children.[2](#)

When the couple differs regarding the period of their conjugal relationship (she claiming that they existed since six months or more, and he denying it, claiming the period to be shorter than six months and denying the child to be his), Abu Hanifah is of the opinion that the wife's word shall be considered true and acted upon without her taking an oath.[3](#)

The Imamiyyah have said: If circumstantial evidence favors his or her contention, it will be acted upon, and if no such evidence exists, the judge shall accept the wife's word after her taking an oath that sex relations with the husband had existed since six months; then the child shall be attributed to the husband.[4](#)

2. When a husband divorces his wife after intercourse and she, after observing the *'iddah*, marries another and gives birth to a child within six months of her second marriage, if six months or more—but not exceeding the maximum period of gestation—have elapsed since her intercourse with the first husband, the child shall be attributed to the former husband. But if more than six months have elapsed after her second marriage, the child is attributed to the second husband.

3. When a woman contracts a second marriage after divorce and then gives birth to a child within six months of intercourse with the second husband, if more than the maximum period of gestation has elapsed since intercourse with the former husband, the child shall not be attributed to any of them. For example, if eight months after divorce a woman marries another person and after living with him for five months gives birth to a child, supposing the maximum period of gestation to be a year, it is not possible to attribute the child to the former husband, because more than a year has elapsed since they had intercourse. It is neither possible to attribute the child to her present husband because six months have not yet passed since their marriage.

## The Maximum Period of Gestation According to Ahl al-Sunnah

Abu Hanifah ha' said: The maximum gestation period is two years on account of a tradition narrated by 'A'ishah that a woman does not carry a child in her womb for more than two years. Malik, al-Shafi'i and Ibn Hanbal state the period to be four years, on the basis that the wife of 'Ajlan carried her child for four years before delivery. It is strange that the wife of his son, Muhammad, had a similar gestation period. In fact all women of Bani 'Ajlan have a gestation period of four years,<sup>5</sup> which indicates God's power over His creation.

This argument, if it proves anything, shows the piousness of these legists and their good intentions, and how often the logic of piety prevails over the logic of reality.

'Abbad ibn 'Awwam puts the maximum period of gestation at 5 years. al-Zuhari at 7 years, and according to Abii 'Ubayd there is no maximum period of gestation.<sup>6</sup>

It follows from these conflicting opinions, that if a person divorces his wife or dies and she, without marrying again after him, bears a child, the child shall be attributed to him if born after: two years, according to Abu Hanifah; four years, according to Shafi'is, Malikis and Hanbalis; five years, according to Ibn 'Awwam; seven years according to al-Zuhari; and twenty years according to Abu 'Ubayd.

Legislation in Egypt relieves us from a critical examination of these varied opinions. The Egyptian Shari'ah courts followed the Hanafi code until the passing of Act 25 of 1929. Section 15 of this Act categorically mentions that the maximum period of gestation is one year.<sup>7</sup>

## The Maximum Gestation Period According to the Shi'ah

There is a difference of opinion among Imami scholars regarding the maximum period of gestation. Most of them have stated it to be nine months, some of them ten months, and some others a year. Thus there is a consensus that the period does not exceed a year, even by an hour. Therefore, if a woman, divorced or widowed, gives birth to a child after one year, the child shall not be attributed to the husband, because there is a tradition from al-'Imam al-Sadiq (a):

إذا طلق الرجل زوجته وقالت أنا حبلى وجاءت به لأكثر من سنة ولو ساعة واحدة لم تصدق في دعواها

***If a man divorces his wife and she claims to be pregnant, and then gives birth to a child after more than a year has passed , even though by an hour, her claim shall not be accepted.***<sup>8</sup>

## Walad al- Shubhah

Shubhah –that is a mistake which leads a man to have intercourse with a woman *haram* to him, as a

result of his ignorance of her being such—is of two kinds: *subhat 'aqd*(mistake of contract) and *sublat fil* (mistake of act).

1. 'Mistake of contract' occurs where a man concludes a marriage contract with a woman in a manner in which legal contracts of marriage are concluded and later it is known that the contract was invalid due to the presence of a cause sufficient to invalidate the contract.

2. 'Mistake of act' occurs where a person copulates with a woman without there being between them any contract, valid or invalid, and he does so either without conscious attention or thinking that she is fulfill to him, and later the opposite is discovered.

Sexual intercourse by a lunatic, or an intoxicated person, or a person in sleep, or a man under the false impression that the woman is his wife, comes under this category. Abu Hanifah has extended the meaning of this form of 'mistake' to its utmost limits where he has observed: Where a man hires a woman for some work and then fornicates with her, or hires her for fornication and does so, the two will not be penalized for fornication. because of his ignorance that his hiring her does not include this act.[9](#)

Accordingly, if she is working in a business establishment or a factory and the proprietor of such establishment copulates with her believing this to be one of the benefits which accrue to him as a result of his hiring her, this act will not be termed fornication, but will be considered 'a mistake' and shall be a valid excuse for the proprietor in Abu Hanifah's opinion.

It follows from the above discussion that a child born as a result of 'intercourse by mistake' is a legitimate offspring and is equal in all respects to a child born out of a valid wedlock, irrespective of whether the mistake is a 'mistake of contract' or a 'mistake of act'. Therefore, he who has intercourse with a woman while in a state of intoxication, or in sleep, or in a state of lunacy or under coercion, or before reaching the age of maturity, or under an impression that she is his wife, with the opposite being discovered later—in all such cases if she gives birth to a child, it shall be attributed to him.

The Imamiyyah have said: In all such cases of mistake, the legality of lineage is established and if the man refuses to recognize the child as his, his refusal shall not be accepted and the child will be compulsorily attributed to him.[10](#)

Muammad Muhyi al-Din, in *al-Ahwal al-shakhsiyyah*, p. 480, observes that lineage is not established in any form of 'copulation by mistake' unless the person acting mistakenly claims the child to be his and acknowledges it, because he knows himself better. But this view is incorrect when applied to a lunatic, to one in sleep, or to an intoxicated person, because they do not act with conscious intent. It is also inapplicable in the case of mistake of contract because there is no difference between a valid contract and an invalid contract except that the couple shall separate when the invalidity of the contract becomes known, and there is a consensus among the Sunni and Shi'i schools that whenever a mistake, in any one of its different forms is proved, it is *wajib* for the woman to observe *'iddah*, as observed by a divorcee; she is also entitled to receive the full *mahr*. Therefore, the rules which apply to a wife will apply

to her as regards *'iddah*, *mahr* and child's lineage. [11](#)

The mistake may be from the side of the man as well as the woman so that both are ignorant and inattentive. It may be from only one side, such as when the woman knows that she has a lawful husband but hides it from the man, or when he is aware while she is a lunatic or in a state of intoxication. When the mistake is from both sides the child shall be attributed to both of them, and if the mistake is from only one side the child shall be attributed to the parent acting under mistake and not to the parent who was aware.

If a person copulates with a woman and then claims ignorance regarding its being *haram*, his word shall be accepted without proof and oath. [12](#)

In any case, the legal principles, according to Sunni and Shi'i schools, do not permit any ruling ascribing illegitimate birth to a child born of a father when there is a possibility of ascribing its *qadi* to a mistake. Therefore, if a *qadi* has evidence before him to suggest 99% probability of the child's illegitimate birth and only 1% probability suggesting it is 'a child by mistake', it is incumbent upon him to accept the latter evidence and disregard the former, giving preference to *halal* over *haram* and legitimacy over illegitimacy, in consonance with the Divine injunctions:

وَقُولُوا لِلنَّاسِ حُسْنًا

***And speak good to the people (2:83)***

اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ

***Eschew much suspicion, for surely some suspicion is a sin. (49: 12)***

Commentators of the Holy Qur'an have narrated that one day when the Prophet (S) was delivering a sermon, a man who was taunted by people regarding his lineage, stood up and asked, "O Prophet, who is my father?" The Prophet (S) replied, "Your father is Hudhayfah ibn Qays." Another person asked him (S), "O Prophet, where is my father?" The Prophet (S) replied, "Your father is in hell." Here verse 101 of the Swat al-Maidah was revealed:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَسْأَلُوا عَنَ أَشْيَاءٍ إِن تَبَدَّ لَكُمْ تَسْوِئَةٌ

***O believers, question not concerning things which, if they were revealed to you, would vex you*** [13](#)

Traditions of the Prophet (S) recorded by Sunni and Shi'i sources state:

الحدود تدرأ بالشبهات

*Penal consequences are repelled by doubts.*

دع ما يريبك إلى ما لا يريبك

*Leave that which puts you into doubt for that which does not.* [14](#)

Imam 'Ali ibn Abi Talib ('a) has said:

ضع أمر أخيك على أحسنه

*Give the best interpretation to your brother's act.*

Al-'Imam al-Sadiq ('a) has said:

كذب سمعك وبصرك عن أخيك

*Reject the evidence of your ear and eye regarding your brother.* [15](#)

The above-mentioned verses of the Qur'an and the reliable and unambiguous traditions quoted, as well as many other verses and traditions of the kind, make it incumbent upon every person to abstain from testifying and judging anyone as an illegitimate offspring unless there exists certainty that he is not in reality a child of mistake in any of its forms.

## **Child Born of al-Mut'ah**

There is something in this regard of which most people are not aware, and I thank the person who wrote me a letter inquiring about this issue. Now, with the present opportunity to explain this legal and historical issue, I intend to be brief to the best of my ability. I shall be a narrator, not a partisan or critic, and shall leave the reader to judge for himself, keeping the matter open for him to affirm or reject.

There is a consensus amongst the Sunni and Shi'i schools that *mutah* (temporary marriage) was *halal* by the order of the Prophet (S) and that Muslims performed *mut'ah* during his time. But they differ regarding its revocation. The Sunnis say: M ut'ah has been revoked and made *haram* after being *halal* earlier. [16](#)

The Shi'ah state: Revocation has not been proved: it was *halal* and shall remain so until the Day of Judgment. The Shi'ah cite verse 24 of the *Surat al-Nisa'* a evidence:

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً

...Give them their dowry for the *mut'ah* you have had with them as a duty... (4:24)

And that which Muslim ha narrated in his *al-Sahih* as a proof:

إِسْتَمْتَعَ الْأَصْحَابُ فِي عَهْدِ رَسُولِ اللَّهِ وَأَبِي بَكْرٍ وَعُمَرَ

The Companions of the Prophet (S) performed *mut'ah* during his lifetime and during the reigns of Abu Bakr and 'Umar.

The *mut'ah* form of marriage is a marriage for a fixed period of time, and according to the Shi'ah it is similar to the permanent marriage a regards the recital of a contract proving express intention of marriage.

Consequently, any form of sexual contact between a man and woman without a contract will not be considered *mut'ah* even if it is by mutual consent and inclination. When the contract is recited it becomes binding and its observance becomes obligatory.

It is compulsory that *mahr* be mentioned in the contract of *mut'ah*. This *mahr* is similar to the *mahr* of a permanent wife, there being no prescribed minimum or maximum limit. and half of it subsides when the stipulated period is gif ted or expires without consummation, in consonance with the rule applied in the *mahr* of a permanent wife divorced before consummation.

It is incumbent upon the woman with whom *mut'ah* has been contracted to undergo the *'iddah* after the completion of the stipulated time, with the difference that a divorcee observes an *'iddah* of three months or three menstrual cycles, while in *mut'ah* she observes an *'iddah* of two menstrual cycles or forty-five days. But as to the *'iddah* observed on the death of the husband, the wife in *mut'ah* observes it for four months and ten days, which is the same as observed by a permanent wife, irrespective of consummation.

The child born of this form of marriage is legitimate and enjoys all the rights of a legitimate child without the exception of a single legal or moral right.

It is compulsory that *mut'ah* be contracted for a fixed period of time and it is necessary that this stipulated time be mentioned in the contract. The wife in *mutah* does not inherit from her husband and her maintenance is also not obligatory upon him. in contrast with the permanent wife, who both inherits and is entitled to maintenance. But a wife in *mut'ah* can stipulate at the time of the contract that she shall inherit and be entitled to maintenance, and if the contract is concluded on these terms, the wife in *mut'ah* becomes similar to a permanent wife. [17](#)

In spite of their belief in the validity of *mut'ah*, the Shi'is of Syria, Iraq and Lebanon do not practice it, and the Ja'fari Shariah Courts in Lebanon, since their inception, have neither applied this form of marriage nor authorized it.

## The Illegitimate Child (Walad al-Zina)

One who studies the verses of the Qur'an, the traditions of the Prophet (S) and the statements of Muslim legists, finds that Islam leaves no room for anyone to accuse others of fornication. Islam has framed the related rules of furnishing proof and giving judgment in a manner that makes this task difficult or even impossible. Whereas Islam considers two just (*'adil*) witnesses sufficient for proving homicide, in the case of fornication it requires four just witnesses to testify that they have witnessed the act of penetration itself. It is not sufficient for them to say that so and so fornicated with so and so, or that they saw the two naked hugging each other in a bed under a single cover. If three witnesses bear witness while the fourth abstains, each of the three shall be liable to a punishment of eighty lashes. Similarly a person who accuses a man or a woman of fornication shall be liable to eighty lashes.<sup>18</sup>

The purpose behind all this is to cover the deed' of people, to protect their honor, to protect the family from the fear of ruined descent and the children from homelessness.

Fornication is the committing of the act by a mature and sane person with the knowledge of its being *haram*. Therefore fornication cannot be committed by a person who has not attained maturity or is insane or is ignorant or has been coerced or is in a state of intoxication. The act committed by these people will be considered 'intercourse by mistake', and we have discussed earlier the rules which apply to it. From the above discussion, it becomes clear that the Islamic Law gives a very restricted interpretation to fornication; firstly, by limiting its application to an act committed with knowledge and intention, wherein there is no scope for attributing it to a mistake or fault in any manner. Secondly, it has restricted the manner of proving it in court by requiring four just witnesses who have seen it with their own eyes, whereas, generally, such an act is not observable. It is possible for a single witness to have seen it, while it is almost impossible for three or four persons to do so. All this clearly indicates that Islam has firmly closed the door in the face of those who seek to raise this thorny issue, because God does not like the spread of indecency among His creatures.

There is a consensus among legists of all the legal schools that when fornication is proved in its above-mentioned meaning and manner, the child born of it shall not inherit from the father because no legal lineal bond is established between them.

But the legists have landed themselves in a legal difficulty by giving the fatwa that an illegitimate issue cannot inherit, and are puzzled in finding a way out of this difficulty: If an illegitimate child is not attributable legally to its male 'parent', then, accordingly, in such a situation, it cannot be impermissible for a man to marry his illegitimate daughter and for an illegitimate son to marry his sister or paternal aunt as long as he is considered a stranger to the male 'parent'.

Therefore, an illegitimate son is either a legally recognized issue and thereby entitled to everything to which legally recognized children are entitled, including the right of inheritance and maintenance, or he is not a legally recognized issue and thereby entitled to all those things which are established as regards those who are legally unrelated, including the marriage with a daughter or a sister. To differentiate between the effects of a single undivided cause is to claim something without requisite proof: it amounts to inclining towards something without any reason for doing so. Therefore, we see the legists differ on this question after having concurred earlier (i.e. in excluding him from inheritance). Maliki and al-Shafi' have said: It is permissible (in such a case) for the person to marry his daughter, his sister, his son's daughter, his daughter's daughter, his brother's daughter and his sister's daughter when these relations have been established as a result of fornication, because they are 'strangers' to him and no legal lineal bond exists between them.<sup>19</sup> But this manner of solving the problem reminds one of the saying: "The cure is worse than the disease."

Imamiyyah legists, Abu Hanifah and Ibn Hanbal have observed: We ought to differentiate between the two situations. We must disqualify the child from inheriting, while at the same time prohibiting matrimonial relationship between the child or its father within the prohibited degrees of relationship. Apart from marriage, to touch and to look at each other is also *haram* for both of them. Therefore, a father cannot look at or touch his illegitimate daughter despite her inability to inherit from him and his of inheriting from her.<sup>20</sup>

They argue that the establishment of matrimonial relationship is *haram* by pointing out that an illegitimate child is after all an offspring, both literally and by general acceptance. Consequently, whatever is *haram* between fathers and children is also *haram* for the illegitimate child and its father. Their argument about the child's disqualification from inheriting is based upon the fact that the child is not acknowledged by the Shari'ah as its father's offspring and this is expressly stated by the verses of the Qur'iin and traditions.

## Al-Laquit

*Al-laquit* is a child found by a person in a state in which it is incapable of fending for itself, whom he takes and brings it up along with the rest of his family. All the legal schools concur that the *laquit* if and its guardian do not inherit from each other, because the act of giving shelter to an abandoned child is purely an act of kindness done in the spirit of cooperating in the performance of good and righteous deeds. It resembles the gif ting of a fortune to someone making him prosperous after earlier indigence and distress with the hope of acquiring God's grace. As this act of kindness is no cause for inheritance, similarly the giving of shelter to an abandoned child.

## Adoption (al-Tabanni)

Adoption is the taking by a person of a child of known parentage and attributing it to himself. The Islamic Shari'ah does not consider adoption as a cause of inheritance, for it does not change the actual fact from

what it is; the lineage of the child is both known and established and lineage can neither be abrogated nor eliminated. This has been clearly mentioned in this verse of the *Surat al-Ahzab*:

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قَلْبَيْنِ فِي جَوْفِهِ ۚ وَمَا جَعَلَ أَزْوَاجَكُمْ اللَّائِي تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ ۚ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۚ ذَلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ ۚ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ

ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ

**...Neither has He made your adopted sons your sons (in fact). That is your own saying, the words of your mouths; but God speaks the truth, and guides on the way. Call them after their true fathers; that is more equitable in the sight of God... (33:4,5)**

The exegetes have mentioned an interesting episode in relation to the revelation of this verse. Zayd ibn Harithah was made captive during the *jahiliyyah* and the Prophet (S) bought him. After the advent of Islam Harithah came to Makkah and asked the Prophet (S) to sell his son to him or to free him. The Prophet (S) said: "He is free; he can go wherever he wants." But Zayd refused to leave the Prophet(S). His father, Harithah, became angry and said: "O people of Quraysh; bear witness that Zayd is not my son." The Prophet (S) then said: "O people of Quraysh, bear witness that Zayd is my son."<sup>21</sup>

The legists have mentioned many other subsidiary issues under this head, and of these are some which are neither acceptable to human reason nor in harmony with the Shari'ah. One of them is the one quoted by the author of *al-Mughni* (vol.7, p.439) from Abu Hanifah, who holds: If a man marries a woman in a gathering and then divorces her in the same gathering before leaving it, or marries her while he is in the east and she in the west, either way if she gives birth to a child six months after the marriage, the child shall be attributed to the husband.

Other opinions are such as whose validity seems questionable from the viewpoint of medical science. The author of *al-Mughni*, in the same volume and on the same page, says: "If the husband is a child of 10 years and his wife becomes pregnant, the child shall be attributed to him."

Similar is the one quoted by the Shi'i author of *al-Masalik* (vol.2, Fasi *ahkaim al-'awlad*): "If penetration occurs without discharge taking place, the child shall be attributed to the husband."

<sup>1</sup>. The Editors' Note: The late author's statement about prophets and Imams does not seem to be in accordance with the Shi'i belief in their 'ismah. To say that prophets and Imams, like ordinary human beings, make statements about things unknown to them on the basis of conjecture and hearsay, goes against the doctrine of 'ismah, i.e. the belief that they, as God's representatives and the trustees of His doctrines and laws, are saved by God from falling not only in minor sins but even errors and omissions.

An important question relevant here is that pertaining to the relationship between religion and nature.

From the viewpoint of Islam, religion, as a system of doctrines and laws, is closely associated with nature and reality. While

the doctrines of the faith, in order to be true, must reflect the reality, the entire philosophy of law in Islam is based on the close association between law and nature. The lawgiver, in order to be able to legislate beneficial laws, must know thoroughly the facts and realities which are relevant to his laws.

Hence God's prerogative to legislate is based, in addition to His Sovereignty and Beneficence, upon His Omniscience: that His knowledge encompasses all things. Now if God authorizes prophets and Imams to legislate about certain matters and to lay down rules and regulations, it cannot be without His putting at their disposal the knowledge of the realities related to those rules and regulations.

Furthermore, we know from the Qur'an that it is a Divine command that one should not go beyond the limits of one's knowledge to make statements based on conjecture and hearsay:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ ۖ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَٰئِكَ كَانَ عَنْهُ مَسْئُولًا

And pursue not that thou hast no knowledge of the hearing, the sight and the heart--all of these shall be questioned. (17:36)

Therefore, it is not possible for prophets and Imams, who are most obedient to God in all matters and hence are models for other human beings to emulate, to make statements about things of which they are ignorant.

Nevertheless, the author is right in rejecting tradition as a source of knowledge in a field which lies well within the scope and range of scientific inquiry, for it is not possible to ascertain the authenticity of traditions with certainty.

[2.](#) The Shi'i work al-Jawahir, Bab al-zawaj, ahkam al-'awlad and al-Ahwal al-shakhsiyyah of Muhammad Muhyi al-Din, p.476.

[3.](#) Al-Durar fi sharh al-Ghurar, vol.1. p.307.

[4.](#) Al-Mughni of Ibn Qudamah, 3rd edition, vol.7, p.477, and al-Fiqh ala al-madhahib al-'arba'ah, 1st ed. vol.4, p.523, mention the maximum period of gestation according to the Malikis to be five years.

[5.](#) Al-Mughni, 3rd ed. vol.7, p.477.

[6.](#) Al- Ahwal al-shakhsiyyah, p.474.

[7.](#) See al-Jawahir, al-Masalik, al-Hada'iq and other Shi'i books.

[8.](#) Al-Mughni, 3rd. ed. vol.8, p.211.

[9.](#) Al-Jawahir, al-Hada'iq and other Shi'i works.

[10.](#) Al-Mughni, vol.7, p.483; vol.6, p.534; and the Shi'i works al-Jawahir and al-Masalik.

[11.](#) Al-Mughni, vol.8, p. 185.

[12.](#) See Majma al-Baym fi tafsir al-Qur'an.

[13.](#) Al-Rasa'il, al-Shaykh al-'Ansari , chapter on al-Bara'ah.

[14.](#) Ibid, chapter on Asl al-sihhah.

[15.](#) Al-Mughni, 3rd. ed., vol.6, p.644

[16.](#) Al-Jawahir

[17.](#) The Shi'i work al-Lum'ah, vol.2, the chapter on hudud; the Sunni work al-Mughni, vol.8, p. 198 ff.

[18.](#) Al-Mughni, 3rd. ed., vol.6, p.578.

[19.](#) Al-Mughni, vol.6, p.577, and the Shi'i work al-Masalik, vol.1, chapter on marriage, fasi al-musaharah.

[20.](#) Majma al-Bayan fi tafsir al-Qur'an.

[21.](#) Al-Jawahir and al-Masalik, chapters on hudud.

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