
Revisiting Islamic Laws of *Istiḥāḍa*



HAGGAI MAZUZ

Abstract

The Islamic laws pertaining to mustḥāḍa—women who have dysfunctional uterine bleeding (istiḥāḍa)—have been overlooked in the research literature. This article reopens the research discourse on this topic by discussing two related questions: may a mustḥāḍa perform religious obligations and may she have sexual intercourse? The questions are shown to be somewhat related. It is found that jurists conceded the right of a mustḥāḍa to pray but disagreed about why—implying, contrary to previous scholarship, that Islam accommodates different levels of ritual impurity—and that they held divergent views on her having intercourse. By probing and investigating Islamic legal sources, it is shown that research assertions about istiḥāḍa thus far require circumscription and re-examination.

Introduction

Despite the recent appearance of several studies on the menstrual laws in Islam,¹ some related topics yet await appropriate treatment. The laws pertaining to *mustḥāḍa*, for example—women who have dysfunctional uterine bleeding (*istiḥāḍa*)—have been overlooked in the research literature. The first scholar who addressed this matter, insofar as I can ascertain this, was Arent Jan Wensinck—who, however, dedicated only a few terse lines to the *mustḥāḍa*. According to Jewish law, says Wensinck, women who bleed due to menstruation or for some other reason are impure to the same degree. Islam, in contrast, he continues, defined a *mustḥāḍa* as only slightly impure. Islamic traditions in the matter, however, have long disagreed on this point and the laws concerning it vary to no small extent.² Wensinck's initial remarks above, however, contain an inaccuracy. The Mishnah, Tractate *Kelīm* 1:3–4 ranks the main sources of impurity (*abōt ha-tūm'ah*) in the order of their severity. According to this ranking, a *zabāh*, a woman who bleeds for reasons other than menstruation, causes

¹See Haggai Mazuz, “Menstruation and Differentiation: How Muslims Differentiated Themselves from Jews regarding the Laws of Menstruation”, *Der Islam* 87/1–2 (2012), pp. 204–223; *idem*, “Islamic and Jewish Law on the Colors of Menstrual Blood”, *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 164 (2014), pp. 97–106; *idem*, “The Islamic Ban on Menstruants’ Touching the Qur’ān—Whence?”, *Journal Asiatique* 303/1 (2015), pp. 131–135; *idem*, “Islamic Laws of Lochia”, *Journal Asiatique* 303/2 (2015), pp. 239–246; *idem*, *Menstruation and Its Legislation: The Evolution and Crystallization of the Law of Menses in the Islamic Juristic Tradition*. With an introduction by Moshe Sharon (Rama Gan, forthcoming) [in Hebrew].

²Arent Jan Wensinck, “Die Entstehung der Muslimischen Reinheitsgesetzgebung”, *Der Islam* 5 (1914), pp. 62–80, at p. 75.

greater defilement than a menstruant (*niddah*) does. As for the disagreement among Islamic authorities, Wensinck has nothing specific to say.

Nearly seventy years after Wensinck, this issue received further treatment. Hava Lazarus-Yafeh made several statements about the *musthāḍa*: (1) Everything forbidden to a menstruant (*ḥā'id*) is permitted to a *musthāḍa*; she, too, offered no specifics. (2) There are no descending levels of impurity in Islam. (3) Islamic law treats her more leniently than does Judaism, yet Lazarus-Yafeh did not specify the dispensations involved.³

I know of no scholarly work since Lazarus-Yafeh that has mentioned this topic. Oddly, neither the first nor the second edition of the *Encyclopedia of Islam* has an entry for *istihāḍa*. The term appears only once in the *Encyclopedia of Islam*, and even then tersely and almost parenthetically. G. H. Bousquet summarises this matter in a few lines: “A discharge which exceeds the legal duration fixed by the doctors of the Law for the menses is called *istihāḍa*; these irregular losses involve only minor impurity, *ḥadath* [q.v.]”.⁴

To date, no scholarly attempt to study the subject further or develop it has been made. A comprehensive study of Sunnī legal sources and the *ḥadīth* literature demonstrates that the questions relating to haemorrhaging women are treated in several different discussions. Given that the Islamic legal sources treat the *musthāḍa* extensively and use a distinct terminology in regard to it, the topic entails study that focuses on it alone. I do not profess to investigate all the relevant laws in this article; instead, I will focus on the discussion of two related questions: permission for a *musthāḍa* to perform religious obligations and to have intercourse. I chose these two discussions because both help to examine and challenge previous scholars' arguments on the subject and raise some points that have not appeared thus far in the research literature. In addition, the choice creates a platform for future research on the topic.

1. Definition of *Istihāḍa*

Before the legal discussions can be explored, the definition of *istihāḍa* should be clarified. Although the aforementioned scholars referred to the *musthāḍa*, none tried to define exactly how and why she acquires this status. Islamic sources claim that *istihāḍa* originates not from the bottom of the uterus (*qa' r al-raḥm*), like menstrual blood, but from a place near it, and that it appears after arterial or venous bleeding.⁵ The precedent for this perception is a *ḥadīth* in which 'Ā'isha relates that Fāṭima bt. Ḥubaysh approached Muḥammad and told him: “O Allāh's messenger! I am *musthāḍa* and have not become pure [again]. Shall I refrain from praying?” Muḥammad said: “No, this is arterial blood, not menstrual blood. Refrain from praying during your days of menses, then perform *ghusl* and *wuḍū'* before each prayer, and then pray”.⁶

³Hava Lazarus-Yafeh, “Between Religious Law in Judaism and Religious Law in Islam: On Some Fundamental and Secondary Differences” *Tarbiẓ* 51 (1982), pp. 207–225, at p. 216 [in Hebrew].

⁴G. H. Bousquet, “Ḥayḍ”, *Encyclopaedia of Islam* (2nd Edition), Vol. 3, p. 315.

⁵See e.g., 'Alī b. Muḥammad al-Māwardī, *al-Ḥāwī al-Kabīr*, 22 vols. (Beirut, 1994), Vol. 1, p. 480.

⁶Muḥammad b. Abī Shayba al-Kūfī, *al-Kitāb al-Muṣannaf fī 'l-Aḥādīth wa'l-Āthār*, 9 vols. (Beirut, 1989), Vol. 1, p. 150. Cf. Muḥammad b. Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 3 vols. (Cairo, 1950), Vol. 1, p. 82; 'Alī b. 'Umar al-Dāraquṭnī, *Ṣunan al-Dāraquṭnī*, 2 vols. (Beirut, 1993), Vol. 1, p. 217 (*ḥadīth* nos. 33–39).

The term *istiḥāḍa* applies in five situations: (1) when menstruation begins before the average age of menses, which Islamic law defines as nine;⁷ (2) when bleeding occurs outside menses, which among most women occurs on regular days in the month (*āda*);⁸ (3) when bleeding is observed more than forty days after childbirth;⁹ (4) when bleeding begins at the time of menstruation but lasts longer than the maximum duration of the menses (*akthar muddat al-ḥayḍ*); and (5) when bleeding begins at the time of menstruation but ceases too quickly to be considered menstrual (*aqall muddat al-ḥayḍ*).¹⁰ In the last-mentioned case, a woman can realise only after the fact that she was *mustḥāḍa* and cannot apply the laws pertaining to that state.

The different schools had different views regarding the length of the last two-mentioned periods.¹¹ The Shāfiʿīs, Mālikīs, and Ḥanbalīs set the duration of *akthar al-ḥayḍ* at fifteen days, basing themselves on ʿAlī b. Abī Ṭālib's words: "The time exceeding [that of] menstruation, which lasted fifteen days, is *istiḥāḍa*."¹² The Ḥanafīs, in contrast, set *akthar al-ḥayḍ* at ten days and *aqall al-ḥayḍ* at three days. They relied on *ḥadīth* that reports Muḥammad as having said: "The duration of menses, of both a virgin girl and a non-virgin woman, should be three days and nights at the very least and ten days at the very most and what exceeds this is *istiḥāḍa*."¹³ To conclude, *istiḥāḍa* is in fact the discharge of blood outside the category of lochia and menses.¹⁴

2. Allowing the *mustḥāḍa* to practice the faith: a concession, or an affirmation of her purity?

The earliest jurists were in consensus about allowing a *mustḥāḍa* to pray but disagreed about why. Is it because she is considered pure or is it due to a concession (*rukḥṣa*) that allows her to pray even though her *istiḥāḍa* renders her impure?¹⁵ On one side of the debate, affirming her *ab initio* purity, we find Saʿīd b. Jubayr, al-Muzanī, ʿAṭāʾ b. Abī Rabāḥ,¹⁶ Ḥasan al-Baṣrī, and Qatāda.¹⁷ On the other side, allowing purity only after the concession, we encounter

⁷See Yaḥyā b. Sharaf Muḥyī al-Dīn al-Nawawī, *Rawḍat al-Ṭālibīn*, 8 vols. (Beirut, 1992), Vol. 1, p. 247; Taqī al-Dīn Aḥmad b. Taymiyya, *Sharḥ al-ʿUmḍa fī ʿl-Fiqh: Kitāb al-Ṭahāra*, 3 vols. (Riyāḍ, 1994), Vol. 1, p. 480; Manṣūr b. Yūnus al-Buhūfī, *Kashshāf al-Qināʿ ʿan Matn al-Iqnāʿ*, 6 vols. (Riyāḍ, 1968), Vol. 1, p. 202.

⁸Abd al-Raḥmān al-Jazīrī, *Kitāb al-Fiqh ʿalā al-Madhāhib al-Arbaʿa*, 5 vols. (Beirut, 1969), Vol. 1, p. 130.

⁹For a discussion of this matter in great detail, see Mazuz "Islamic Laws of Lochia", pp. 241–244.

¹⁰See Muḥammad b. al-Humām, b. ʿAbd al-Wāḥid, *Sharḥ Faṭḥ al-Qaḍīr li ʿl-ʿĀjiz al-Faqīr*, 8 vols. (Egypt, 1897), Vol. 1, p. 124; Abū Bakr b. Masʿūd al-Kāsānī, *Badāʾiʿ al-Ṣanāʿi fī Tarīḥ al-Sharāʾiʿ*, 6 vols. (Beirut, 1998), Vol. 1, p. 158. Cf. Zayn al-Dīn Abū ʿl-Faraj ʿAbd al-Raḥmān b. Aḥmad b. Rajab, *Faṭḥ al-Bārī: Sharḥ Ṣaḥīḥ al-Bukhārī*, 10 vols. (Medina, 1996), Vol. 2, p. 53.

¹¹For legal discussions of the Muslim sages and an analysis of these two topics, see Mazuz, *Menstruation and Its Legislation*, Chapter 5.

¹²Abū Muḥammad ʿAbd Allāh b. Aḥmad b. Muḥammad b. Qudāma al-Maqdisī, *al-Mughnī*, 9 vols. (Beirut, 1980), 1, p. 409; al-Māwardī, *al-Ḥāwī*, Vol. 1, p. 532.

¹³See ʿAlī b. Abī Bakr al-Marghīnānī, *al-Hidāya: Sharḥ Bidāyat al-Mubtadī*, 4 vols. (n.p., 2000), Vol. 1, p. 245; al-Kāsānī, *Badāʾiʿ al-Ṣanāʿiʿ*, Vol. 1, p. 154; ʿUmar b. Ibrāhīm b. Nuḡaym, *al-Nahr al-Fāʾiq: Sharḥ Kanz al-Daqāʾiq*, 3 vols. (Beirut, 2002), Vol. 1, pp. 129–130; Muḥammad b. Aḥmad al-Sarakhsī, *Kitāb al-Mabsūṭ*, 30 vols. (Beirut, 1980), Vol. 2, p. 16.

¹⁴On lochia, see Mazuz, "Islamic Laws of Lochia", pp. 239–246.

¹⁵Muḥammad b. Rushd, *Bidāyat al-Mujtahid wa-Nihāyat al-Muqtaṣid* (Cairo, 1950), p. 49. On *rukḥṣa*, see M. J. Kister, "On Concessions and Conduct. A Study in Early *Ḥadīth*", in G. H. A. Juynboll (ed.), *Studies on the First Century of Islamic Society* (Carbondale, 1982), pp. 89–107; Ruud Peters, "Rukḥṣa", *Encyclopaedia of Islam* (2nd Edition), 12 vols. (Leiden, 1995), Vol. 8, pp. 595–596; Mazuz, "Menstruation and Differentiation", pp. 211–213.

¹⁶Abd Allāh b. ʿAbd al-Raḥmān al-Dārimī, *Sunan al-Dārimī* (Medina, 1966), p. 170 (*ḥadīth* nos. 823, 827, 829).

¹⁷Abd al-Razzāq al-Ṣanʿānī, *al-Muṣannaf*, 12 vols. (Beirut, 2000), Vol. 1, p. 239 (*ḥadīth* no. 1186).

Ibrāhīm al-Nakha'ī, Sulaymān b. Yasār, al-Sha'bī, Ibn Sīrīn, and al-Zuhrī. The latter based their argument on the impurity of a *musthāḍa* because they considered any flow of blood a source of harm (*adhan*). The word *adhan* is taken from the beginning of Q. 2:222, which refers to menstrual blood: “They will question thee concerning the monthly course. Say: It is *adhan*”.¹⁸ Therefore, they draw no distinction between menstrual blood and *istihāḍa*. Yet, as an act of leniency, they allow a *musthāḍa* to pray.¹⁹ Their reasoning was that *istihāḍa* is beyond the individual's control. In addition, since *istihāḍa* may persist for a long time, theoretically it may restrict some women from praying for so long that they may forget how to pray.

Al-Nakha'ī differed from his colleagues in that he permitted a *musthāḍa* to pray but not to fast or to read the Qur'ān.²⁰ Al-Sha'bī forbade fasting only.²¹ Although the reasoning of al-Nakha'ī and al-Sha'bī does not appear in the texts, these authorities apparently perceived the *musthāḍa* as only somewhat impure. Al-Nakha'ī's and al-Sha'bī's opinions were not accepted. The later jurists assumed that a *musthāḍa* is permitted to perform all religious acts—fasting, reading the Qur'ān, praying, and circumambulating the Ka'ba (*tawāf*) as part of the pilgrimage to Mecca—except on her regular days of menses.²² Before the last two of the aforementioned practices, she should perform *ghusl* and tie a piece of cloth between her thighs and hips. These jurists derived this teaching from a *ḥadīth* in which a woman who had endured a lengthy *istihāḍa* consulted 'Abd Allāh b. 'Umar and received this instruction.²³

2.1. The actions that a *musthāḍa* must perform before prayer

One *ḥadīth* states that Umm Salama approached Muḥammad to ask him what a woman who sees “many bloods” should do. Muḥammad instructed Umm Salama to tell this woman to remember on what days she had been menstruant in the month before “what befell her befell her” (i.e., *istihāḍa*) and to refrain from praying on these days (since as a menstruant she may not pray). When the days of menses are over, Muḥammad continued, she should perform *ghusl* (as every post-menstruant must), then tie a piece of cloth between her thighs and hips, and then pray.²⁴

Many jurists adduced from this *ḥadīth* that a woman who has regular *istihāḍa* must perform several actions before praying.²⁵ First, she has to remember her regular days of menses during the preceding month. Then she must divide her month into two parts: that of menstruation (*ḥayḍ*) and that of *istihāḍa*. In the regular menstruation period, she should regard any blood

¹⁸Translation taken from *The Koran Interpreted*. Edited by A. J. Arberry (London, 1964).

¹⁹Muḥammad b. Aḥmad al-Anṣārī al-Qurtubī, *al-Jāmi' li-Aḥkām al-Qur'ān*, 10 vols. (Beirut, 1965), Vol. 3, p. 86. Cf. al-Dārimī, *Sunan*, p. 170 (*ḥadīth* no. 836).

²⁰al-Ṣan'ānī, *al-Muṣannaf*, Vol. 1, p. 240 (*ḥadīth* no. 1195); al-Dārimī, *Sunan*, p. 170 (*ḥadīth* no. 834).

²¹Abū Bakr Aḥmad b. al-Ḥusayn al-Bayhaqī, *Kitāb al-Sunan al-Kubrā*, 10 vols. (Haydarabad, 1925), Vol. 1, p. 329.

²²al-Qurtubī, *al-Jāmi' li-Aḥkām al-Qur'ān*, Vol. 3, p. 86. Cf. al-Marghīnānī, *al-Hidāya*, Vol. 1, p. 246.

²³See al-Sayyid Sābiq, *Fiqh al-Sunna*, 3 vols. (Beirut, 1995), Vol. 1, p. 496. Cf. al-Ṣan'ānī, *al-Muṣannaf*, Vol. 1, p. 239 (*ḥadīth* no. 1190).

²⁴al-Dāraquṭnī, *Sunan*, Vol. 1, p. 220 (*ḥadīth* no. 58); Mālik b. Anas, *al-Muwatta'* (Beirut, 1999), p. 75 (67); Ibn Abī Shayba, *al-Muṣannaf*, Vol. 1, pp. 150–151; Abū Dā'ūd Sulaymān b. al-Ash'ath al-Sijistānī, *Sunan Abī Dā'ūd*, 2 vols. (Cairo, 1952), Vol. 1, p. 72.

²⁵As far as I can ascertain, there is no source that lists all the actions; the following description relies on the multiple sources that are mentioned in this article.

that she sees as menstrual blood and must refrain from prayer (as well as other religious practices and intercourse). When these days are over, she performs *ghusl*, as every woman after the end of her menses must, to cleanse herself of her discharge. Afterwards, she must—not may—pray. Before every prayer, she must perform *wuḍūʾ*—a purification ritual that every Muslim must perform before every such devotion—and tie a piece of cloth between her thighs and hips, lest blood drip on her body or on her prayer rug, rendering her unable to pray once again. Due to this concern about residual bleeding, a *musthāda* must pray immediately after the *wuḍūʾ* so that no drop of blood has time to emerge. Thus, she cannot purify herself before the time of prayer arrives. If a *musthāda* nevertheless prepares for prayer so as to complete the preparations just as the time for prayer arrives, she may perform the *wuḍūʾ* before the prayer time and then pray as soon as prayer time comes. If she performs the purification ritual at that time but is delayed for a reason related to the prayer, she should not repeat the *wuḍūʾ*; otherwise, she should repeat it. All this demonstrates the importance of cleanliness for the worshipper.

3. Is a *musthāda* allowed to have intercourse?

According to Wensinck, the question of the *musthāda* was disputed and the rules varied considerably for much time.²⁶ The topic under discussion is a good example of this. The Islamic authorities disagree about whether a *musthāda* may have sexual intercourse. Their discussion is somewhat connected to the juridical discussion over whether she can pray. It seems that the early Islamic authorities had diverse opinions on the topic, ranging from prohibition to neutrality to permission.

According to one source, ‘Ā’isha considered intercourse by a *musthāda* detestable (*makrūh*) but did not specifically forbid it.²⁷ According to another source, she claimed it is forbidden.²⁸ She was followed in the latter view by al-Nakhaʿī, Sulaymān b. Yasār, al-Shaʿbī, Ibn Sīrīn and al-Zuhrī,²⁹ who, as noted above, considered any flow of blood a source of harm. Ibn ‘Abbās, when asked whether a man may have intercourse with his wife while she is *musthāda*, said that he saw no problem in doing so.³⁰ Ikrima reported that the husbands of Umm Ḥabība and Ḥamna bt. Jaḥsh, two important women who are considered authorities on the marital laws, had intercourse with them when they were *musthādāt*.³¹ Many *tābiʿūn*, such as Saʿīd b. Jubayr, Saʿīd b. al-Musayyab, ‘Aṭā’ b. Abī Rabāḥ,³² and Qatāda,³³ followed this opinion. As we have seen, these are the jurists who believed that a *musthāda* may recite the prayers because she is ritually pure; this explains why they allow her to engage in intercourse.

One tradition may explain the logic behind Saʿīd b. Jubayr’s opinion. Asked whether a *musthāda* is allowed to have intercourse, he replied: “Prayer is greater than intercourse”,³⁴

²⁶Wensinck, “Die Entstehung der Muslimischen Reinheitsgesetzgebung”, p. 75.

²⁷al-Dāraquṭnī, *Sunan*, Vol. 1, p. 219 (*ḥadīth* no. 65).

²⁸al-Dārimī, *Sunan*, p. 170 (*ḥadīth* no. 835); al-Bayhaqī, *al-Sunan al-Kubrā*, Vol. 1, p. 329.

²⁹al-Qurṭubī, *al-Jāmiʿ li-Aḥkām al-Qurʾān*, Vol. 3, p. 86.

³⁰al-Ṣanʿānī, *al-Muṣannaf*, Vol. 1, p. 240 (*ḥadīth* no. 1190); al-Dārimī, *Sunan*, p. 170 (*ḥadīth* no. 822).

³¹Abū Dāʾūd, *Sunan*, Vol. 1, p. 74; al-Bayhaqī, *al-Sunan al-Kubrā*, Vol. 1, p. 329.

³²al-Dārimī, *Sunan*, p. 170 (*ḥadīth* nos. 823–825, 830–831).

³³al-Ṣanʿānī, *al-Muṣannaf*, Vol. 1, p. 239 (*ḥadīth* nos. 1186–1887).

³⁴al-Ṣanʿānī, *al-Muṣannaf*, Vol. 1, p. 239 (*ḥadīth* no. 1188); al-Dārimī, *Sunan*, p. 170 (*ḥadīth* no. 823).

i.e., prayer requires more stringent conditions of purity than intercourse does. Thus, if a *musthāda* may pray, *a fortiori* she may have intercourse. An expression of Sa'īd b. Jubayr's lenience on this issue is that he allows a *musthāda* to have intercourse even if she bleeds vigorously.³⁵ By implication, he considers a *musthāda* pure.

The disagreement recurred in later periods. Ibn Ḥanbal forbade intercourse with a *musthāda* unless her *istihāda* lasts a long time, in which case it is permitted.³⁶ He did not define how long this must be. According to al-'Aynī, Ibn Ḥanbal permitted intercourse for a *musthāda* if she were "afraid of the sin" but did not explain what sin was at issue.³⁷ By implication, the sin was probably intercourse during the regular menses days; after all, Ibn Ḥanbal permitted intercourse to a *musthāda* if her bleeding lasted long. Apparently, Ibn Ḥanbal feared that if much time passed, the *musthāda* and her husband would have intercourse due to lack of self-restraint. Worse still, their self-restraint might give way on the *musthāda*'s regular days of menses, and since she is a long-term *musthāda* she would not distinguish between one form of discharge and another. Believing it impractical to prohibit intercourse with a long-term *musthāda* and thus using *istiḥsān*,³⁸ Ibn Ḥanbal adopted a lenient approach toward the topic under discussion.³⁹

Mālik argued that it is permitted to have intercourse with a *musthāda*, basing himself on a *ḥadīth* according to which a woman named Fāṭima bt. Abī Ḥubaysh experienced *istihāda* and Muḥammad told her: "This blood comes from one of the arteries and is not menstrual blood".⁴⁰ Mālik's logic is that only menstrual blood enjoins a woman against having intercourse. According to Ibn Rushd, the jurists of the garrison towns (*amṣār*) concurred.⁴¹ Al-'Aynī reports that the majority of the scholars (*jumhūr al-'ulamā*) did the same.⁴²

Conclusion

By probing and investigating Islamic legal sources, one finds that scholars' assertions about *istihāda* thus far require circumscription and reexamination. For example, Lazarus-Yafeh's sweeping claim that everything forbidden to a menstruant is permitted to a *musthāda* is overly general, since some jurists permitted her to pray only. She also finds no declining degrees of impurity among different sources of bleeding in Islam. Yet we see that a *musthāda* is permitted to pray, suggesting that she is less impure than a menstruant, for whom prayer is forbidden.⁴³

³⁵ al-Dārimī, *Sunan*, p. 170 (*ḥadīth* no. 826).

³⁶ al-Qurtubī, *al-Jāmi' li-Aḥkām al-Qur'ān*, Vol. 3, p. 86.

³⁷ Abū Muḥammad Maḥmūd b. Aḥmad al-'Aynī, *al-Bināya fī Sharḥ al-Hidāya*, 10 vols. (Beirut, 1990), Vol. 1, p. 662. Cf. al-Qurtubī, *al-Jāmi' li-Aḥkām al-Qur'ān*, Vol. 3, p. 86.

³⁸ On *Istiḥsān*, see Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge, 2005), pp. 144–145. According to some opinions, the permission to have intercourse with a *musthāda* stems from *rukḥṣa*. See Ze'ev Maghen, "Close Encounters: Some Preliminary Observations on the Transmission of Impurity in Early Sunni Jurisprudence", *Islamic Law and Society*, 6/3 (1999), pp. 348–392, at p. 384, n.96. Notably, there are some commonalities between *istiḥsān* and *rukḥṣa*.

³⁹ Ibn Rushd, *Bidāyat al-Mujtahid*, p. 49.

⁴⁰ al-Qurtubī, *al-Jāmi' li-Aḥkām al-Qur'ān*, Vol. 3, p. 86.

⁴¹ Ibn Rushd, *Bidāyat al-Mujtahid*, p. 49.

⁴² al-'Aynī, *al-Bināya*, Vol. 1, p. 662.

⁴³ Elsewhere I challenge this view in greater details. See Mazuz, "Islamic Laws of Lochia", pp. 245.

Furthermore, Lazarus-Yafeh argues that the Islamic laws of *istiḥāḍa* are more lenient than their Jewish counterparts. Here too, circumscription is needed; her claim is valid only regarding permission to have intercourse. Where rituals are concerned, it is not true because a passage in *Tōseftā Berakhōt* 2:12 reads: “Men who had a flow (*zabīn*), women who had a flow (*zabōt*), menstruants (*niddōt*), and women who have given birth (*yōldōt*) are permitted to read the Torah and to learn Mishnah, Midrash, laws, and Aggadot. Men who have had a seminal emission (*ba‘alei qerayīn*) are forbidden [to partake in] all of them”. If so, Islamic and Jewish laws are not of one mind about participation in rituals.

This article shows that, between the lines, Muslim jurists disagreed about whether a *mustḥāḍa* is impure or not. Those who answered in the negative—that she is not impure—permitted to her to pray and have intercourse. Those who considered her (somewhat) impure let her pray as an act of leniency but considered the possibility of her having intercourse indecent. This suggests that both sides sought to establish a different and more lenient status, i.e., a less severe degree of impurity, for her than for the menstruant. The reason is that even those who frowned on intercourse by a *mustḥāḍa* were not as vehement as they were in the case of a menstruant, for whom the prohibition was supported by consensus.

HAGGAI MAZUZ

School of International Studies, Sun Yat-sen University,
hagaimazuz@gmail.com