

Tafsīr al-Qurṭubī  
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Juz' 5: Sūrat an-Nisā' 23-176



# Tafsīr al-Qurṭubī

The General Judgments of the Qur'an  
and Clarification of what it contains  
of the Sunnah and *Āyahs* of Discrimination

Abū 'Abdullāh Muḥammad ibn Aḥmad ibn Abī Bakr  
ibn Farḥ al-Anṣārī al-Khazrajī al-Andalusī al-Qurṭubī

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translated by

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## Table of Transliterations

ء	'	ض	ḍ
ا	a	ط	ṭ
ب	b	ظ	ẓ
ت	t	ع	'
ث	th	غ	gh
ج	j	ف	f
ح	ḥ	ق	q
خ	kh	ك	k
د	d	ل	l
ذ	dh	م	m
ر	r	ن	n
ز	z	ه	h
س	s	و	w
ش	sh	ي	y
ص	ṣ		

### Long vowel

ا	ā
و	ū
ي	ī
أَوْ	aw
أَيَّ	ay

### Short vowel

َ	a [ <i>fatḥah</i> ]
ُ	u [ <i>dammah</i> ]
ِ	i [ <i>kasrah</i> ]

## TRANSLATOR'S NOTE

The Arabic for the *āyats* is from the Algerian State edition of the *riwāyah* of Imam Warsh from the *qirā'ah* of Imam Nāfi' of Madina, whose recitation is one of the ten *mutawātir* recitations that are mass-transmitted from the time of the Prophet ﷺ.

There are minor omissions in the text. Some poems have been omitted which the author quotes to illustrate a point of grammatical usage or as an example of orthography or the usage of a word, often a derivative of the root of the word used in the *āyah*, but not the actual word used. Often it is difficult to convey the sense in English. Occasionally the author explores a grammatical matter or a tangential issue, and some of these may have been shortened. English grammatical terms used to translate Arabic grammatical terms do not have exactly the same meaning, sometimes rendering a precise translation of them problematic and often obscure.

The end of a *juz'* may vary by an *āyah* or two in order to preserve relevant passages.





## SŪRAT AN-NISĀ' – WOMEN 23 – 176

حُرِّمَتْ عَلَيْكُمْ وَأُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخْوَانُكُمْ وَعَمَّاتُكُمْ  
وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأَخْتِ وَأُمَّهَاتُكُمْ لِلدِّينِ  
أَرْضَعْتَكُمْ وَأَخْوَانُكُمْ مِنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ  
وَرَبَائِبُكُمْ الَّذِينَ فِي مَجُورِكُمْ مِنْ نِسَائِكُمُ الَّذِينَ دَخَلْتُمْ  
بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ  
وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا  
بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا ﴿٢٣﴾

23 Forbidden for you are: your mothers and your daughters and your sisters, your maternal aunts and your paternal aunts, your brothers' daughters and your sisters' daughters, your foster mothers who have suckled you, your foster sisters by suckling, your wives' mothers, your stepdaughters who are under your protection: the daughters of your wives whom you have had sexual relations with (though if you have not had sexual relations with them there is nothing blameworthy for you in it then), the wives of your sons whom you have fathered, and marrying two sisters at the same time – except for what may have already taken place. Allah is Ever-Forgiving, Most Merciful.

### Forbidden for you are: your mothers and your daughters

This means it is unlawful for you to marry your mothers and daughters. In this *āyah*, Allah mentions which women are lawful and which are unlawful as He has already mentioned the prohibition of marrying a father's wife. Allah forbade seven on account of lineage and six on account of suckling and marriage. The *Sunnah* adds a seventh, which is being married to a woman and her aunt at the same time, and there is consensus on that. It is confirmed that Ibn 'Abbās said,

‘Lineage forbids seven and marriage seven,’ and he recited this *āyah*. ‘Amr ibn Sālim, the freedman of the Anṣār, said the like of that and said, ‘The seventh is in Allah’s words: “*married women*” (in the next *āyah*).’

The seven by lineage are: mothers, daughters, sisters, paternal aunts, maternal aunts, brothers’ daughters and sisters’ daughters. The seven forbidden by marriage and suckling are: foster mothers by suckling, foster sisters by suckling, the mothers of wives, stepdaughters, the wives of sons, and being married to two sisters at the same time. The seventh are women your fathers have married.

Aṭ-Ṭaḥāwī said, ‘All of this is confirmed judgment and agreed on. The consensus is that it is not permitted to marry any of them except the mothers of wives with whom the marriage was not consummated. Most of the early generations held that the mother was forbidden by the contract with the daughter but that the daughter only forbidden by consummation with the mother. This is the position of most of the imams who give fatwa.’ One group of the early generations said, ‘Mothers and foster daughters are the same: they are only made unlawful by virtue of consummation with the other.’ They said that *‘your wives’ mothers’* means mothers of the wives with whom you have consummated marriage. In respect of the words: *‘your stepdaughters who are under your protection, the daughters of your wives whom you have had sexual relations with,’* they claim that the condition of consummation refers to both mothers and stepdaughters. Khilās related that from ‘Alī ibn Abī Ṭālib. It is related from Ibn ‘Abbās, Jābir, and Zayd ibn Thābit, and it is the position of Ibn az-Zubayr and Mujāhid. Mujāhid said that that is meant in both cases.

The position of the majority is contrary to this. The people of Iraq were severe and said, ‘Even if he has intercourse with her by fornication, or kisses or touches her with lust, her daughter is forbidden for him.’ According to us and ash-Shāfi‘ī, she is forbidden by a valid marriage, and the unlawful does not make the lawful unlawful. The *ḥadīth* which Khilās cites from ‘Alī is not evidence and its transmission is not considered sound by the people with knowledge of *ḥadīth*. What is soundly reported from him is like the position of the Group.

Ibn Jurayj said, ‘I asked ‘Aṭā’, “If a man marries a woman and then does not see her or have intercourse with her before he divorces her, is her mother lawful to him?” “No,” he replied, “she is parted from him whether or not he has consummated it.” I then said to him, “Did not Ibn ‘Abbās recite, ‘the mothers of your wives with whom you have had sexual relations?’” “No, no,” he said.’ Sa‘īd related from Qatādah from ‘Ikrimah from Ibn ‘Abbās that ‘wives’ mothers’ is undefined, and a woman becomes unlawful simply by virtue of a contract with her daughter. This is similar to what Mālik related in the *Muwattā’* from Zayd ibn

Thābit. 'Zayd said, "No. The mother is prohibited unconditionally. There are conditions, however, about foster-mothers.'" Ibn al-Mundhir said, 'This is sound since all mothers of wives are included in the expression.'

This is supported in terms of syntax by the fact that when two predicates have a different regent, what they describe is not the same. According to grammarians, it is not permitted to say, 'I passed by your wives, and I fled from Zayd's wives, who were elegant' when 'elegant' is an adjective describing 'your wives' and 'Zayd's wives'. That is also the case in the *āyah*: it is not permitted for '*allātī*' to describe both of them because there are different predicates. It is. However, permitted if it means: 'I mean'. [ILLUSTRATIVE POEM]

There is an explicit *ḥadīth* in which the Prophet ﷺ said, 'When a man marries a woman, it is not lawful for him to marry her mother, whether or not he has consummated the marriage with the daughter. When he marries the mother and does not consummate the marriage and then divorces her, if he so wishes, he can marry her daughter.' If this is confirmed and established, then you know that the prohibition does not describe individuals, as they are not the subject of general legalisation or prohibition, but is a general obligation of commanding and forbidding connected to the actions or inaction of those who have legal responsibility. When that is connected to individuals, it alludes to the general ruling and judgment. It is connected to it metaphorically as an allusion to what is lawful in action.

'*Your mothers*' is a general prohibition in every case and not specific to a particular aspect the matter. This is why the people of knowledge call it 'undefined', meaning that there is no definitive opening to it nor any means to bar the prohibition. It is the same with the prohibition of daughters, sisters and the other categories of forbidden women mentioned. *Ummahāt* (mothers) is the plural of *ummahah*. It is said that *umm* and *ummahah* mean the same. The Qur'an uses both and this was explained in the commentary on the *Fātiḥah*. It is said that the root of '*umm*' is '*ummahah*' on the measure of *fi'alah*, like *qubbarah* and *hummarah* for two birds (lark and dove). The letter is dropped but returns in the plural. [POEM] It is said that root of *umm* is *ummah*. [POEM] If that were the case, its plural would be *ummāt*. [POEM]

The word 'mother' is a term that comprises every female responsible for your birth, and that includes your actual mother, her mother and her grandmothers, and her father's mother and her grandmothers. 'Daughter' is used for every female in whose birth you have a part, and so the prohibition applies to every female whose lineage derives from you, which would include daughters, their daughters,

and also the daughters of your sons. ‘Sister’ applies to every female connected to you via one or both parents. The plural of *ukht* (sister) is ‘*akhawāt*’.

A ‘paternal aunt’ is every female who shares with your father or grandfather in one or more of his parents and includes the sister of your father’s mother. The term ‘maternal aunt’ applies to every female in whose parents or parent your mother shares. So that includes the sisters of your father’s mother. A ‘brother’s daughter’ is every female in whose birth your brother played a part, directly or indirectly and the same is true of a ‘sister’s daughter’. These seven are forbidden by lineage.

In the variant of Abū Bakr ibn Abī Uways Nāfi‘ recited ‘*akhkh*’.

### **your foster mothers who have suckled you**

‘Abdullāh recited ‘*ummahātukumu’llāya*’ without *tā*. [EXAMPLES]

They are forbidden in the the same way as the others already mentioned. The Prophet ﷺ said, ‘What is unlawful by lineage is unlawful by suckling.’ So when a woman suckles a male child, she is forbidden to him because she is his mother, her daughter is forbidden because she is his sister, her sister because she is his aunt, her mother because she is his grandmother, the daughter of her husband because she is his sister, his sister because she is his paternal aunt, and his mother because she is his grandmother, as well the daughters of his sons and daughters because they are daughters of his brothers and sisters.

Abū Nu‘aym ‘Ubaydullāh ibn Hishām al-Ḥalabī said, ‘Mālik was asked whether a woman may perform *ḥajj* with her brother by suckling. “Yes,” he said.’ Abū Nu‘aym also said, ‘Mālik was asked about a woman who married and her husband consummated the marriage and then a woman came who claimed that she had suckled both of them. He said, “They are separated and what she took from him is hers and he does not have to pay anything he still owes.” Then Mālik said, “The Prophet ﷺ was asked about a similar situation and commanded that. They said, ‘Messenger of Allah, she is a weak woman.’ The Prophet ﷺ said, ‘Will it not be said that so-and-so has married his sister?’”

The prohibition based on suckling occurs when the suckling is in the first two years, as was mentioned in *al-Baqarah*. With us, there is no difference between a little and a lot of suckling as long as it reaches the stomach, even a single swallow. Ash-Shāfi‘ī makes that conditional on two things. One is that it happens five times, based on the *ḥadīth* of ‘Ā’ishah: ‘Part of what Allah Almighty revealed of the Qur’an is that ten known breast-feedings make unlawful and then that was abrogated by five known ones. When the Messenger of Allah ﷺ died that was in what is recited of the Qur’an.’ The evidence is that ten was abrogated by five, and

if less than five had created the prohibition, that would also have had to have been abrogated. On this basis, a single report would not be accepted and there is no analogy because they are not abrogated. We find in the *ḥadīth* of Sahlah, ‘Suckle him five times and you will be forbidden to marry him.’

The second condition is that it occurs in the first two years. If it is after that, it has no effect since Allah says: ‘...two full years – those who wish to complete the full term of nursing.’ (2:233). There is nothing after completion. Abū Ḥanīfah allowed six months after two years. Mālik said a month or so. Zafar said, ‘As long as the child only drinks milk and is not weaned, he is nursing, even if it is three years old.’ Al-Awzā‘ī said, ‘When it is weaned after a year and remains weaned, there is no suckling after that.’

Al-Layth ibn Sa‘d alone among scholars says that suckling an adult brings about the prohibition. It is the position of ‘Ā‘ishah and is related from Abū Mūsā al-Ash‘arī, but something is also related from him indicating that he retracted that. Abū Ḥuşayn reported that Abū ‘Aṭīyyah said, ‘A man came with his wife to Madīnah and she became pregnant and her breasts swelled. He began to suck it and spit it out but some of it went into his stomach. He asked Abū Mūsā who said, “She is separated from you. Go to Ibn Mas‘ūd and tell him.” He did that and Ibn Mas‘ūd then brought the Bedouin back to Abū Mūsā al-Ash‘arī and said, “Do you think this grey-haired man is a suckling child! It is the suckling which produces flesh and bone which makes marriage unlawful.” Al-Ash‘arī remarked, “Do not ask me about anything while this scholar is among you.” This indicates that he retracted his position.

‘Ā‘ishah’s evidence was the story of Sālim, a man who was the *mawlā* of Abū Ḥudhayfah. The Prophet ﷺ told Sahlah bint Suhayl, ‘Suckle him.’ The *Muwattā’* and other sources transmitted it. One group took an aberrant view and considered the prohibiting number of sucklings to be ten, holding to what was revealed. It is as if the abrogation had not reached them. Dāwūd said that a woman only becomes forbidden after three sucklings. He cited as evidence the words of the Prophet ﷺ, ‘She is not made unlawful by one or two sucklings.’ Muslim transmitted it. It is related from ‘Ā‘ishah and Ibn az-Zubayr. That is the position of Ahmad, Ishāq, Abū Thawr and Abū ‘Ubayd. It is holding to something on the basis of a statement, and it is disputed.

A number of the imams of *fatwā* say that the prohibition is achieved by just one suckling, which is the minimum to which the name of suckling can be applied and this was the practice in Madīnah and is analogous to in-lawship for the reason that it is something new which demands perpetual prohibition and no number

is stipulated, as is also the case with in-lawship. Al-Layth ibn Sa'd said, 'The Muslims agree that both a little and a lot of suckling make unlawful in the cradle that which breaks the fast.' Abū 'Umar said, 'Al-Layth did not come across the disagreement about that.'

There is a clear text about this: 'One or two sucks does not bring about prohibition.' Muslim transmitted it in the *Ṣaḥīḥ*. This explains the meaning of Allah's words in this *āyah*. It means that the number of sucklings is three times or more, since it is possible that it did not reach the stomach. That is the reason for the words, 'ten known sucklings' and 'five known sucklings'. They are described as 'known' to avoid what is doubtful or where it is uncertain that it has reached the stomach. It is deduced from the words that if the number of the instances of suckling are not known, then they do not make someone unlawful. Allah knows best.

At-Ṭaḥāwī mentioned that [the report about] one or two sucklings is not confirmed because sometimes it is related by Ibn az-Zubayr from the Prophet ﷺ, sometimes from 'Ā'ishah, and sometimes from his father. Such confusion annuls it. It is also related from 'Ā'ishah that seven sucklings make someone unlawful. It is also related from her that she instructed her sister Umm Kulthūm to suckle Sālim ibn 'Abdullāh ten times. The same is related from Ḥaḥṣah. Three times is also related from her as is five times, as ash-Shāfi'ī said and is related from Iṣḥāq.

This *āyah* also indicates negation of the effect of milk produced by a male which does not create the prohibition. Sa'īd ibn al-Musayyab, Ibrāhīm an-Nakha'ī and Abū Salamah ibn 'Abd ar-Raḥmān said, 'Milk produced by a male does not render anyone unlawful.' Most say that the words indicate that the male is the father because the milk is ascribed to him and is a result of his child. This is weak. A child is created from the fluids of the man and woman together and milk emerges from the woman and not the man. All that the man did was to engage in sexual intercourse which is the cause of the emission of fluid from him. When the child is weaned, Allah creates milk without any ascription to the man in any way whatsoever. That is why the man has no right with respect to milk. Milk belongs to the woman. So it is not possible to make that analogous to any other fluid. The words of the Messenger of Allah ﷺ, 'Suckling makes unlawful what lineage makes unlawful,' make it clear that the prohibition is on account of suckling, and there can be no ascription of suckling to the man in the way that the ascription of the fluid to him is evident. Suckling is the business of the woman. Indeed, the basis of it is found in the *ḥadīth* of az-Zuhrī and Hishām ibn 'Urwah from 'Urwah in which 'Ā'ishah said that Aflaḥ, the brother of Abu-l-Qu'ays came and asked

permission to visit her after the veil had been lowered, and he was her paternal uncle by suckling. She said, 'I refused to give him permission to enter. When the Prophet ﷺ came, I told him about what I had done and he said, "Let him enter. He is your uncle!"' Abu-l-Qu'ays was the husband of the woman who had nursed 'Ā'ishah. This is a single report. It is possible that Aflah and Abū Bakr were milk siblings and that is why he said, 'Let him enter. He is your uncle!'

In general, the position regarding this matter is unclear and knowledge rests with Allah. However, the normative practice is based on it and it is better to be cautious regarding the prohibition although the words of Allah: *'Apart from that He has made all other women lawful for you,'* strengthen the position of the one who disagrees.

**your foster sisters by suckling,**

This means full sisters by the same mother and father, which means the woman suckled them both by the milk generated by the pregnancy caused by the father, whether it is at the same time or if she was born before or after him. It also includes a sister by the same father but from another mother. In other words, one who was suckled by [another] wife of the father. It also includes a sister by the same mother who was suckled by the milk caused by a pregnancy from a different man.

**your wives' mothers,**

Then Allah mentions the prohibition caused by marriage and says, *'your wives' mothers.'* Four come under this heading: the wife's mother, her daughter, the wife of the father and the wife of the son. The wife's mother is made unlawful by virtue of a sound contract, as already stated.

**your stepdaughters who are under your protection: the daughters of your wives whom you have had sexual relations with**

This is a separate category and does not pertain to the first group. It refers to stepdaughters. A stepdaughter is the daughter of a man's wife by another man. She is called that (*rabībah*) because she is raised (*rabbaba*) in his care. So it means 'cared for' (*marbūbah*). *Fuqahā'* agree that a stepdaughter is unlawful to her mother's husband when the marriage has been consummated, even if the daughter is not actually in his care.

Some early scholars and the literalists took an aberrant position and said that a man's stepdaughter is not unlawful for him unless she was actually in his care when he was married to her mother. If she was in another town and separate from



her mother after he consummated the marriage with her, then he is permitted to marry her. They cited this *āyah* as evidence and said that Allah only made stepdaughters unlawful under two conditions. One is that she is in the care of the man married to her mother. The second is that the marriage with her mother has been consummated. If either of these conditions is missing, then there is no prohibition. They also cited as evidence the words of the Prophet ﷺ: ‘Even if she had not been my stepdaughter in my care she would not be lawful for me since she is my milk niece.’ So he made care of her a condition.

It is related that ‘Alī ibn Abī Ṭālib allowed that. Ibn al-Mundhir and aṭ-Ṭaḥāwī said, ‘As for the *ḥadīth* of ‘Alī, it is not firm because it is related by Ibrāhīm ibn ‘Ubayd from Mālik ibn Aws from ‘Alī. Ibrāhīm is not recognised. Most of the people of knowledge accuse him of repudiation and disagreement.’ Abū ‘Ubayd said, ‘It is refuted by his words, “Do not display your daughters or sisters to me.” It is undefined and he did not say, “those in my care”. He made them all the same with respect to prohibition.’ Aṭ-Ṭaḥāwī said, ‘Their ascription to “care” (literally “laps”) is because that is usually the case with stepdaughters; they are not unlawful when they are not like that.’

**though if you have not had sexual relations with them there is nothing blameworthy for you in it then.**

The pronoun ‘*them*’ here refers to the mothers and the subsequent ‘*it*’ refers to marrying their daughters if you divorce them, or they die, before consummation takes place. Scholars agree that when a man marries a woman and then divorces her or she dies before consummation, it is lawful for him to marry her daughter. They disagree about the definition of consummation with the mothers by which the prohibition of stepdaughters occurs. It is related that Ibn ‘Abbās said that consummation means sexual intercourse, which is the position of Ṭāwūs, ‘Amr ibn Dīnār and others. But Mālik, ath-Thawrī, Abū Ḥanīfah, al-Awzā‘ī, and al-Layth agree that if he touches her lustfully, her mother and daughter are prohibited for him, and she is prohibited for his father and son. It is one of two positions of ash-Shāfi‘ī.

There is disagreement where looking is concerned. Mālik said, ‘When a man looks at her hair, breast, or some of her beauties for pleasure, her mother and daughter are forbidden to him.’ The Kufans said, ‘If he looks lustfully at her private parts, it is like touching her with lust.’ Ath-Thawrī said, ‘The prohibition comes about if he deliberately looks at her private parts or touches her,’ and he did not mention lust. Ibn Abī Laylā said, ‘She is not forbidden by looking until



he actually touches her,' and that is the position of ash-Shāfi'ī. The evidence for looking bringing about a prohibition is that it is a type of enjoyment and so is like sexual intercourse. Judgments are connected to meanings not words. It is possible to say that it is a type of union through enjoyment. The look is a form of joining and encounter and enjoyment is experienced by lovers through it. Poets went to great lengths about that as in the following:

Does not night join us to Umm 'Amr? That brings us close.

Yes, she sees the crescent moon as I see it. Day is over her as it is over me.

So then how much is that the case with looking, sitting together, talking together and the pleasure of that?

### **The wives of your sons whom you have fathered**

*Ḥalā'il* is the plural of *ḥalīlah* which means wife. She is called that because she stops (*halla*) with her husband where he stops. Az-Zajjāj and some people believed that it is derived from *ḥalāl* (lawful) and so it means that she is made lawful. It is said that it is because each of them can undo (*halla*) the waist-wrapper of his partner.

Scholars agree on the prohibition of fathers marrying after sons or sons after fathers, whether there is sexual intercourse after the contract or not, because Allah says: *'Do not marry any women your fathers married'* (4:22) and: *'the wives of your sons whom you have fathered.'* If one of them marries with an invalid marriage contract, that creates the same impediment that a sound contract would do, because an unsound contract can be agreed to be unsound or that can be disputed. If it is agreed to be unsound, then it does not oblige a ruling and it is the same whether it exists or not. If it is disputed, then the same prohibition is connected to it that is connected to a sound contract because of the possibility that it is a marriage and therefore included under the generality of the term. In this sort of case, when there is a conflict between prohibition and lawfulness in respect of private parts, prohibition dominates, and Allah knows best. Ibn al-Mundhir said, 'All reputable scholars from the various regions agree that if a man has sexual intercourse with a woman in an unsound marriage, she is unlawful to his father, son, grandfathers and grandchildren.

Scholars also agree on another issue. The purchase of a slavegirl by a man does not make her unlawful to his father or son, but if a man buys a slavegirl and touches or kisses her, then she becomes unlawful to his father and son, and I do not know of any disagreement about that. There is disagreement about whether

the prohibition arises by merely looking at her without touching, and so that is not permitted because of the disagreement. Ibn al-Mundhir said, ‘Nothing different to what we said is confirmed from any of the Companions of the Messenger of Allah ﷺ.’ Ya‘qūb and Muḥammad said, ‘When a man looks at the private parts of a woman with lust, she is unlawful for his father and son and her mother and daughter are unlawful to him.’ Mālik said, ‘When a man has sex with a slavegirl or goes to her with that intention, even if he does not complete it, kisses her, touches her or presses her with pleasure, she is then not lawful for his son.’ Ash-Shāfi‘ī said, ‘She becomes unlawful by touch but not a glance without touching.’ That is the view of al-Awzā‘ī.

There is disagreement about sexual intercourse in fornication and whether that creates the prohibition or not. Most of the people of knowledge say that if a man fornicates with a woman, marriage with her is not forbidden by that nor is marriage with her mother or daughter. It is enough that the *ḥadd* punishment is carried out on him and then he consummates with her as his wife. If someone fornicates with a woman and then wants to marry her mother or daughter, that is not unlawful for him. One group say that it does create a prohibition, and this position is related from ‘Imrān ibn Ḥuṣayn and it is the position of ash-Sha‘bī, ‘Aṭā’, al-Ḥasan, Sufyān ath-Thawrī, Aḥmad, Ishāq and the People of Opinion. It is related from Mālik that fornication renders both the mother and daughter unlawful, just as is the case with a lawful marriage. That is also the position of the people of Iraq.

The sound position of Mālik and the people of the Hijaz is that fornication has no bearing here because Allah says: ‘*the mothers of your wives,*’ and fornication plays no part in that. That is the position of ash-Shāfi‘ī and he said because in fornication there is no dowry, *‘iddah*, inheritance or paternity as there is in legal marriage, and the *ḥadd* punishment is mandatory. Ad-Dāraqūṭnī related from az-Zuhrī from ‘Urwah that ‘Ā’ishah said, ‘The Messenger of Allah ﷺ was asked about a man who fornicates with a woman and wants to marry her or her daughter and he said, “The unlawful does not make the lawful unlawful. The prohibition is created by marriage.”’

Part of the argument for the other view is found in the report of the Prophet ﷺ about Jurayj in his words, ‘Boy, who is your father?’ and he answered that it was a certain shepherd. This would indicate that fornication makes unlawful what lawful marriage makes unlawful. So neither the mother nor the daughters of a woman are lawful to the fathers or sons of the man who fornicated with her. That is transmitted by Ibn al-Qāsim in the *Mudawwanah*, and it is also used as

evidence that a female, who is the result of fornication, is not lawful to the man who committed fornication with her mother. That is well known. The Prophet ﷺ said, 'Allah will not look at a man who looks at the private parts of both a woman and her daughter,' and he did not make a distinction between lawful and unlawful. He ﷺ also said, 'Allah will not look a man who removes the covering of both a woman and her daughter.' Ibn Khuwayzīmandād said, 'That is why we said that kissing and other forms of enjoyment bring about prohibition.'

'Abd al-Malik ibn Mājīshūn said, 'She is lawful. That is sound based on the words of the Almighty: *"It is He Who created human beings from water and then gave them relations by blood and marriage."* (25:54) This means sound marriage as will be explained in *al-Furqān*. The manner in which one holds to the *ḥadīth* about those two questions is that the Prophet ﷺ related that Jurayj ascribed the bastard to the fornicator and Allah affirmed his relationship by a miracle in which the infant spoke and testified to that, and the Prophet ﷺ reported that from Jurayj as praise and making his miracle known. That ascription was sound because Allah affirmed the truth and the Prophet ﷺ reported that. It confirmed Prophethood and its rulings. If it is said that, on this basis, the rulings of Prophethood and paternity proceed in inheritance, guardianship and other matters, when there is agreement among the Muslims that they do not inherit from one another, so how can this ascription be valid, the answer to that is that what we mentioned obliges this and the consensus concurs about the rulings we excepted, while the rest remain on the basis of that evidence. Allah knows best.

Scholars also disagree about sodomites in this context. Mālik, ash-Shāfi'ī, and Abū Ḥanīfah and his people say that marriage is not forbidden on account of sodomy. Ath-Thawrī says, 'If someone plays with a boy, then the boy's mother is forbidden to him.' That is the position of Aḥmad ibn Ḥanbal who said, 'When someone commits sodomy with a woman's son, father or brother, that woman is unlawful for him.' Al-Awzā'ī said, 'When someone commits sodomy with a boy who later fathers a daughter, the man is not permitted to marry her because he is the daughter of someone he has had sex with.' That is also the position of Aḥmad ibn Ḥanbal.

The phrase *'whom you have fathered'* is a specification that excludes adopted sons. When the Prophet ﷺ married the ex-wife of Zayd ibn Ḥārithah, the idolaters said, 'He has married his son's wife!' since the Prophet ﷺ had adopted him. This will be explained in *al-Aḥzāb*. The wife of a milk son is unlawful, even though there is no direct lineage, based on the consensus which derives from the statement of the Prophet ﷺ about suckling making unlawful what lineage makes unlawful.