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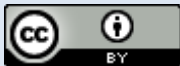
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Research Article

Legislating Modesty: Classical and Contemporary Debates on State-Enforced Hijab in Islamic Governance

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Abstract. This paper examines the controversial issue of state-enforced hijab within Islamic governance. The debate is pivotal to the discourse on women's rights within Islamic societies and is intertwined with broader socio-political dynamics such as governance, human rights, and individual freedom. Despite extensive literature on various dimensions of hijab, there remains a gap in analyses that bridge classical Islamic political thought with contemporary socio-political realities. Employing a qualitative textual analysis of classical treatises and modern scholarly debates, this study assesses whether the state holds a legitimate role in mandating hijab. It explores historical enforcement mechanisms and contrasts them with ideological arguments surrounding hijab enforcement in the modern era. The findings reveal that while classical Islamic scholars emphasized the state's role in upholding public morality, explicit discussions on hijab enforcement are largely absent. Meanwhile, contemporary debates reveal a spectrum ranging from advocacy for state-enforced hijab to moderate and liberal emphases on personal choice and opposition to coercion. The paper proposes a balanced maqasid-based approach, recommending that Islamic governance prioritize inculcating a culture of

modesty through education and public engagement over deploying extensive and coercive legal measures.

Keywords: Hijab Enforcement, Islamic Governance, Human Rights, Shariah Law

INTRODUCTION

In September 2022, the chant of “Zan, Zindagi, Azadi” was echoed by protestors in the streets of Tehran after the death of Mahsa Amini, a 22-year-old woman who died under mysterious circumstances after being arrested by Iran’s morality police for allegedly not conforming to the country’s hijab guidelines (Aljazeera, 2022). Mahsa’s death and the subsequent protests were attributed to the state’s heavy-handedness in enforcing hijab laws. The incident in Iran is just one of many instances that have fueled the rise of anti-hijab movements and sentiments in some Muslim countries (Izharuddin, 2018; Kahalzadeh, 2024).

The issue of hijab enforcement is deeply rooted in the historical and political trajectories of Muslim nations. In the post-colonial era, many Muslim-majority countries grappled with identity crises, resulting in the rise of political Islam. Since implementing and enforcing the ‘Laws of God’ is a recurrent theme in Islamic political thought (Anis, 2018, p. 25), different political factions have invoked it as a framework for governance. As a result, some governments adopted parts of the Shariah to assert cultural and religious independence, and sometimes, this included the enforcement of hijab as a means of showcasing a return to “authentic” Islamic values (M. Khan, 2005). Thus, a government’s approach to hijab policies became a signal of its broader ideological stance, governance model, and engagement with modernity (Li, 2022). Hence, the debate over hijab enforcement extends far beyond modesty and dress codes for individuals. It is deeply tied to complex questions on state authority, religious freedom, and the role of Islam in public life. As the Islamic political discourse continues to evolve, the hijab debate remains central, not only shaping policies and public debates but also highlighting the complexities and challenges of integrating Shariah within modern governance.

This paper examines the debate on hijab enforcement, analyzing its religious, political, and social dimensions across both classical and contemporary contexts. It explores classical Islamic perspectives, where scholars emphasized the state’s role in upholding public morality, and compares them with modern discussions that reflect shifting socio-political landscapes. The paper maps out various scholarly positions and examines the broader question of legislating modesty. The paper argues for a balanced approach, where the state sets minimum modesty expectations but prioritizes public awareness and voluntary adherence over coercion, and suggests creating an overarching maqasid-based framework to evaluate whether enforcement policies strengthen faith or risk alienating people from religious practice. Ultimately, this paper aims to provide a comprehensive analysis of hijab enforcement, offering insights into its historical foundations, modern complexities, and potential paths forward in shaping a just and sustainable approach to legislating and enforcing modesty.

The paper is organized as follows. The first section is the **introduction**, which provides the context of this paper. The second section is the literature review, which highlights existing scholarship and identifies gaps in the discourse on hijab enforcement. The third section provides an overview of the research methods employed, while the fourth section is the discussion that presents the theological foundations of hijab and its enforcement and covers classical political thought on public morality, contemporary debates among various ideological perspectives, the risks of enforcement mechanisms, and a maqasid-based framework for evaluating hijab policies. The fifth section is the recommendation, which presents the researchers' views, and finally, the conclusion summarizes key findings.

LITERATURE REVIEW

Existing scholarship on hijab has expanded significantly over the past decades, addressing issues ranging from religious obligation to human rights and feminist reinterpretations. However, the majority of studies do not engage critically with the specific question of whether, from the Islamic perspective, the state can or should enforce hijab through legal and punitive mechanisms. This review maps the dominant themes in current literature and highlights the gap that this study seeks to address.

Hijab, Human Rights, and Women's Freedom

A significant body of literature situates hijab debates within the broader framework of human rights and women's personal agency. Syed (2021) examines how hijab and niqab bans in public spaces intersect with human rights, revealing that such policies contribute to surveillance and systemic discrimination. Similarly, Ahmad (2022) argues that hijab bans disproportionately restrict Muslim women's freedom of religion and movement, exacerbating social exclusion and violating international human rights standards. Zidan (2016) analyzes Islamic feminist interpretations of hijab through Leila Aboulela's *Minaret*, emphasizing the need to challenge patriarchal interpretations while advocating for women's freedom to wear or not wear the hijab. Similarly, Nazari (2021) discusses Muslim feminist perspectives that view the hijab as a symbol of oppression or societal expectation rather than a religious necessity. On the opposite end, Yunianti (2022) explores women's personal experiences with wearing and removing the hijab, finding that decisions to unveil stem from complex motivations, including disappointment with religious expectations and the desire for self-acceptance.

Religious Obligation and Interpretations of Hijab

Another strand of scholarship focuses on the theological foundations of hijab and the varying interpretations of its obligation. Rohman (2024) critically analyzes Quraish Shihab's interpretation, which argues that hijab is a recommendation limited to the Prophet Muhammad's time, whereas other scholars maintain it as a perpetual obligation. Similarly, Imani (2020) examines whether hijab is an individual or social obligation, concluding that it is primarily an individual duty with undeniable social implications. Sulaiman (2020) investigates the importance of wearing the hijab according to the Qur'an and Sunnah, highlighting its role in promoting obedience to

God, fostering respectability, and liberating women from objectification. Siddique (2021) highlights the scholarly debate over terms like khimar and jilbab, with some scholars insisting that covering the face is obligatory, others considering it recommended, and a third group viewing the commands as context-dependent and open to individual interpretation.

Comparative Studies on Hijab Laws in Different Countries

A growing body of comparative legal studies examines how hijab policies vary across different contexts. Oktavian (2024) compares hijab bans in France, compulsory hijab laws in Iran, and Aceh, Indonesia, highlighting how Aceh's approach aligns with religious freedom, unlike the French and Iranian policies that face criticism for violating international human rights standards and Islamic principles. Similarly, Koo (2018) analyzes hijab policies in Turkey, showing that despite their opposing regulations, women in both countries struggle for the right to choose, underscoring the hijab's deep political significance. In Malaysia, a study by Mat Nurudin (2024) on Kelantan's local councils reveals that Islamic by-laws enforcing covering attire for Muslims and modest dress codes for non-Muslims are generally well-received by residents. Similar research about the USA (Abdo, 2008), Tunisia, Kosovo (Perkins, 2012), and others addresses different policies across various countries and contexts.

Identified Gap

Collectively, the existing literature provides valuable perspectives on hijab in the context of personal agency, human rights contestation, and legal regulation. However, there remains a significant gap in scholarship that systematically integrates Islamic political thought, both classical and contemporary, with the question of state-enforced hijab. This paper addresses that gap by examining the classical Islamic conception of public morality enforcement through institutions like hisbah, contemporary arguments regarding state authority, and the modern socio-political realities that complicate religious enforcement.

METHODOLOGY

This study adopts a qualitative textual and comparative analysis approach to explore the issue of hijab enforcement within Islamic governance. It critically examines primary sources, including classical Islamic political treatises by scholars such as Al-Mawardi and Ibn Taymiyyah, alongside contemporary debates in political science and Islamic studies. The method involves critically analyzing classical perspectives on public morality and state responsibility, examining contemporary arguments on hijab enforcement, and contextualizing both within broader debates about the role of Islamic governance in shaping modesty norms. The study synthesizes historical insights and contemporary discourses to offer a principled analysis grounded in Islamic legal principles and socio-political realities.

DISCUSSION

Debate Over Religious Status of Hijab from An Islamic Perspective

What is Hijab?

The word hijab is derived from the Arabic root letters ح ج ب, which means to cover, hide, to shelter with a screen, or to make something inaccessible (Lane, 1865). In the context of contemporary clothing, it refers to a scarf or piece of cloth that is worn by Muslim women that covers the hair, neck, and ear while keeping the face visible (Juergensmeyer & Roof, 2012, p. 516) when in public in front of strangers.

In Islamic jurisprudence, the hijab encompasses a broader meaning than its contemporary association with a piece of cloth that is wrapped to cover the hair. The Kuwaiti Fiqh Encyclopedia, one of the largest compilations of comparative jurisprudence, defines the hijab as “what a woman wears of clothing to cover her awrah from strangers (non-mahram men)” (2005, v. 17 p. 6). This distinction is important because what is commonly referred to as ‘hijab’ today is closer to the definition of ‘khimar,’ which specifically denotes the head covering in the Arabic language. Some scholars define it as a covering that extends over the head, temples, or neck. Thus, while the hijab refers to the overall concept of Islamically acceptable attire for women, the khimar focuses on the head covering aspect within the broader Islamic framework of modesty (2005, p. 5). In this paper, the definition of hijab will be restricted to contemporary understanding, which is the basic head covering that covers the hair (either partially or fully), neck, and ears and is either tightly or loosely fitted, which in Islamic jurisprudence is equivalent to the khimar.

Quranic References of Hijab

The term hijab appears in seven verses in the Quran¹. However, in all these verses, the word is not used in the context of clothing and does not refer to the head covering commonly worn by Muslim women. Instead, the word hijab refers to either a physical or spiritual barrier or separation. So, where does the idea of wearing the ‘hijab’ come from? The concept of ‘wearing the hijab’ in the context of clothing is derived from two injunctions that specifically address the clothing of Muslim women in the Quran². In the verse in Surah Al-Nur, the word *khumur* (pl. of *khimar*) refers to the covering worn by Arab women (N. Stillman, 2000, p. 16) since pre-Islamic times.

While the apparent and explicit commandment is to extend their headscarves to cover their chests, most Muslim scholars hold that the verse also includes an implicit commandment to cover the hair. This is in line with what authoritative exegetes like Al-Tabari (2001, v. 17 p. 262) have mentioned in their exegesis of this verse from Surah Al-Nur. In the verse from Surah Al-Ahzaab, the Prophet ﷺ is commanded to tell Muslim women to fully wrap themselves when going out. Here, the word *jilbaab* refers to the outer garment or cloak that a woman wraps over her clothes to cover her entire body and clothing (Gazdar, 2019, p. 35). Thus, the *jilbaab*, by definition, doesn’t necessarily include the *khimar*, which is worn over the head. These are the only two verses in the Quran that directly discuss Muslim women’s clothing.

¹ Al-Isra 17:45, Maryam 19:17, Al-Ahzab 33:53, Fussilat 41:5, Ash-Shuraa 42:51, Al-A'raf 7:46, Sad 38:32

² Al-Nur 24:31, Al-Ahzaab 33:59

Scholarly Consensus

Scholarly consensus, also known as *ijmaa*, is the third most important source of Islamic jurisprudence. In fact, Alkeik (2021) considers *ijmaa* to be the strongest evidence to prove that it is obligatory for a woman to cover her head. She writes:

One of the strongest pieces of evidence for the legal obligation of covering the hair and dressing modestly is the fact that scholars have come to a consensus on the matter. When scholars all agree, implicitly or explicitly, on a legal ruling, the third primary source of Islamic law manifests: that of *ijmā'* or consensus.

However, most books of jurisprudence do not directly mention the obligation to wear a head covering that covers the hair. Instead, much of the discussion revolves around the wider concept of *awrah* (lit. private parts), which refers to the parts of the body that need to be covered and are not supposed to be exposed to others for both men and women. The jurists defined the *awrah* of a woman as that which she is required to conceal from non-mahram men, and it includes her entire body, except for the face and hands (Awqaf, 2005, v. 17 p. 6)". This implies that the hair should also be covered. Ibn Hazm (2014) in *Maratib Al-Ijmaa* highlights the consensus of Muslim scholars that the *awrah* includes hair:

They [i.e. the scholars] agreed that the hair and body of a free woman, except for her face and hands, are *awrah* (private parts to be covered). They differed regarding the face and hands, including whether even the fingernails are considered *awrah*. (p. 29)

While the scholarly consensus remains strong on the obligation to cover the *awrah*, including the hair, it is not without contemporary challenge. As highlighted in the literature review, Rohman (2024) has presented and critically examined Shihab's arguments over the timeless applicability of hijab. Despite this, scholars like Alkeik (2021) maintain that the consensus of scholars throughout Islamic history provides strong legal grounding for the obligation. Thus, while modern scholarship may raise some interpretive challenges, the classical tradition remained largely unified in viewing the hijab, as obligatory.

Hijab Enforcement in Classical Islamic Tradition

Although Muslim scholars agree that wearing the hijab is obligatory for women, there is ongoing debate among scholars and political scientists about whether the state should mandate and enforce this practice by law. Neither the Qur'an nor the Sunnah provide explicit instructions for its enforcement, nor do they prescribe a specific punishment for non-observance, making the issue a subject of debate based on interpretations of Islamic law.

An analysis of the prominent classical texts of Islamic political thought that talk about the enforcement or implementation of Shariah by the state does not reveal anything particular about the hijab. This is because the enforcement of the hijab as a distinct legal or political mandate is largely a contemporary phenomenon, and the specific legal mechanisms to enforce the hijab were not emphasized in early Islamic political thought. Therefore, to understand the potential of hijab enforcement under the classical perspective, one must do so indirectly by examining the broader concepts surrounding shariah enforcement. For this purpose, the researcher has

chosen to focus on two prominent classical political thinkers: Al-Mawardi and Ibn Taimiyyah.

Both Al-Mawardi, Ibn Taimiyyah considered the state to be responsible for enforcing the shariah. However, there is one aspect in which Ibn Taimiyyah diverged from Al-Mawardi's opinion. Ibn Taimiyyah did not put the responsibility of enforcing the Shariah solely on the ruler; rather, according to him, the wider responsibility to enforce the Shariah also lies with the ummah itself. This means that in the absence of state power, a decentralized and localized approach should evolve to take over the functions of a centralized ruler when it comes to implementing Islamic laws (Anjum, 2012).

Let's move to the mechanism of enforcement. It is important to note that in classical Islamic political thought, mechanisms for enforcing Shariah were limited in scope and sophistication compared to modern states. Thus, their opinions also reflect these constraints. Both Al-Mawardi and Ibn Taimiyyah discuss the enforcement of the Shariah by the state through a mechanism which is known as the 'hisbah' or the office of the hisbah, and they largely agree on the role and function of the hisbah.

Technically, the hisbah is a moral as well as a socio-economic institution in Islam through which public life is regulated in such a way that a high degree of public morality is attained, and the society is protected from illicit practices (Ibn Taymīyah, 1982, p. 9). The primary duty of the muhtasib, also known as the 'market supervisor,' is to monitor and regulate the market, such as verifying weights and measures and checking for adulteration, deception, and other related things. Over time, the office of the hisbah became more sophisticated, and the jurisdiction of the muhtasib expanded beyond what was historically documented from the time of the Prophet ﷺ. While Al-Mawardi and Ibn Taimiyyah have highlighted several areas of responsibility for the muhtasib, the duties of the muhtasib that are relevant to the potential enforcement of hijab under the classical paradigm are two:

The first area of duty is the enforcement of practices that are deemed obligatory. The muhtasib is tasked with ensuring compliance with religious duties such as performing the five daily prayers in their designated time and imposing flogging and punishments upon those who flout this obligation (Ibn Taymīyah, 1982, p. 26). The second relevant area of duty is public morality. The muhtasib is responsible for fostering public morality and keeping them away from dubious situations and blameworthy actions (Al-Mawardi, 2000, p. 270). When individuals engage in activities deemed contrary to Islamic public morality, the muhtasib can intervene (Ibn Taymīyah, 1982, p. 59). In this area, the muhtasib's jurisdiction also extended to various aspects of social behavior such as punishing those who engaged in activities considered immoral, such as drinking alcohol, gambling, and frequenting suspicious places. Furthermore, they were also tasked with preventing inappropriate interactions between men and women. For example, Al-Mawardi states that if there is a market trader who often deals with women. The muhtasib is authorized to verify his good behaviour and trustworthiness. If the trader's behavior is corrupt, then he can be banned from dealing with women and punished if he continues to do so (al-Mawardi, 2011, p. 361).

One can infer from their broader discussion that matters relating to religious observances and public morality fall within the jurisdiction of the state. Since both scholars view Qur'anic injunctions under the general command of *amr bil ma'ruf wa nahi 'anil munkar* (enjoining good and forbidding evil), it can be argued that hijab, being a Qur'anic command could potentially be enforced by the state. The state can also invoke the principle of *maslahah mursalah* (public interest) to argue that its enforcement serves societal benefit. Historically, most discussions about hijab remained restricted to books of jurisprudence. There is no evidence that the issue ever entered the jurisdiction of state enforcement or was ever a central point of the Islamic political discourse. By and large, women in Muslim societies practiced some form of hijab, with regional variations of style, color, and extent, without state supervision or enforcement.

Hijab Enforcement: Contemporary Perspectives Colonialism and De-Hijabization

In the 19th and 20th centuries, large parts of the Muslim world underwent several political changes; many Muslim lands were colonized, whereas others witnessed major changes in their political leadership. In light of these changes, there were several cases where the wearing of hijab by Muslim women came under attack by different political powers with various motivations. For example, in Algeria, the French colonial regime explicitly targeted the hijab and other forms of Islamic dress as part of their "civilizing mission". The French regime distributed propaganda linking the veil to backwardness, primitiveness, and the subjugation of women, suggesting that abandoning the hijab was a necessary step toward progress, modernity, and enlightenment under French ideals (Perego, 2015).

Similar projects of varying degrees were seen in other parts of the Muslim world. However, in most cases, these 'de-hijabing' projects ultimately backfired and led to counter-movements that often became coupled with movements calling for independence and political change. Thus, the wearing of hijab became a symbol of resistance and a means of asserting religious-cultural identity and self-determination (Leloup, 2023, p. 60).

The Proponents

One particularly striking example of this pattern unfolded in Iran. In the 1930s, under the Pahlavi dynasty, Reza Shah implemented aggressive measures to secularize and Westernize society, which included the banning of the veil in public. The Shah introduced a mandatory unveiling policy in 1936, and this decree forced women to remove their veils, often publicly, and police were ordered to tear off the hijabs of those who resisted (Maranlou, 2022). The unpopularity of Reza Shah's enforcement policies was well capitalized by Ayatollah Khomeini, the chief architect of the Islamic Revolution of Iran.

Khomeini

Khomeini's vision for an Islamic society required the implementation of Islamic laws (1981, p. 30) which encompassed all areas of human life, from personal

conduct to social, economic, and political affairs (Ḥumainī & Algar, 2002, p. 28). According to Majeed Karbas (2023), Khomeini regarded the hijab as integral to the moral and spiritual integrity of society, viewing its abandonment as a colonial tactic designed to weaken Muslim nations and erode their cultural foundations. He states that for Khomeini, the enforcement of the hijab was not merely a matter of personal choice but a cornerstone for establishing an Islamic society. When it came to enforcement Khomeini supported the enactment of legal measures to enforce the hijab, such as the 1984 law imposing penalties for women who did not observe hijab in public. Khomeini, as per Karbas, did not tolerate any leniency in the enforcement of this law. However, it is reported that Khomeini wanted the enforcement of the hijab to be carried out with respect for individual dignity, and he disapproved of the use of excessive force (Karbasiforoshan et al., 2023).

Abul Ala Mawadudi

A contemporary of Khomeini was the South Asian scholar and political thinker Abul Ala Mawadudi, who had a big impact on the field of Islamic political thought in general and the Islamization project in Pakistan in specific. In his book *Purdah and the Status of Women*, Mawdudi (1939) describes the hijab as an integral part of the Islamic social system and believes it aims to safeguard marriage, prevent sexual anarchy, and provide an environment. Mawdudi even considered the face covering (niqab) to be obligatory. However, he clarifies that the Islamic concept of hijab is not a rigid, unchanging custom but a rational law that allows for exceptions and adjustments based on circumstance (1939, p. 137).

Mawdudi held that the enforcement of Islam by the state is essential as Islam is the divinely ordained system of life that governs all aspects of human existence (Nasr, 1996, p. 80). Based on his writings Jackson (2011) concludes that coercion is a necessary element of the Islamic social order in Mawdudi's thoughts. He states:

Mawdudi's outline of the state is authoritarian in the sense that political coercion is required to implement Islamic theology throughout all elements of life. Mawdudi has shown throughout his writings a lack of trust in general human will and has, therefore, chosen to exclude it as a weakness and a distraction from his political aims. (p. 141)

Mawdudi never formally called for the state to enforce hijab in explicit terms and consequently did not elaborate on the specific mechanisms of enforcement in his writings. However, given his view of hijab as a divine injunction for women, the enforcement of modesty norms would theoretically fall under the state's broader responsibility to uphold Islam. Therefore, an Islamic state that is tasked with implementing "God's law" would necessarily enforce hijab as part of its mandate to establish a virtuous social order and prevent sexual immorality, under Mawdudi's paradigm. Among the Islamists of the modern and post-modern era, only Khomeini was specific about his views on hijab enforcement and at the same time successful in bringing it to the practical realm after the 1979 revolution.

The Detractors

There are several well-known detractors to either the idea of hijab enforcement by the state or the enforcement of religion by the state in general (which by extension includes the enforcement of hijab as well).

Rached Ghannouchi

Tunisian intellectual, politician, and political thinker Rached Ghannouchi, for example, opposes the enforcement of hijab by the state. In an interview with Aljazeera, he speaks out against the imposition of hijab by the state (Moshiri, 2011). He advocates for the right of individuals, both women and men, to select their own way of life, and opposes the enforcement of the headscarf under the guise of Islam, as well as the prohibition of the headscarf in the name of secularism or modernity. Ghannouchi emphasizes that religion (and by extension, religious practices) must arise from personal conviction rather than coercion and imposition by the state (Ghannouchi, 2022, p. 55). And just as he is against the imposition of the hijab by the state, similarly he is against the state banning the hijab as well, which alludes to the fact that he sees the state's role as creating an environment where individuals can freely choose to observe their faith without interference.

Tariq Ramadan

Like Ghannouchi, Tariq Ramadan recognizes the hijab as an Islamic obligation for Muslim women. But at the same time, he stresses the importance of personal choice in its observance. Ramadan (2017) says:

Islam prescribes the hijab clearly. However, it is not up to Muslims to impose it on women. It is a matter of faith, and this is a clear principle. A woman must approach it of her own free will. It is not imposed on women, just as a particular societal norm is not imposed.

Thus, Ramadan does not agree with the enforcement of the hijab by the state and, similar to Ghannouchi, is against the idea of the state preventing Muslim women from observing the hijab as a religious obligation.

Muqtedar Khan

Ramadan and Ghannouchi have spoken specifically against the enforcement of hijab but still lay an emphasis on integrating Islamic values with democratic frameworks in their works. However, towards the liberal side of the spectrum, Muqtedar Khan builds on this idea of voluntary religiosity. He shares An-Na'im's (2008) critique of state-imposed religiosity and stresses the need for governance rooted in consent and consultation rather than coercion (2019). While Khan does not explicitly address hijab enforcement, he underscores the importance of separating religion from state power. For Khan, the state's role is to facilitate a just and inclusive society that removes any barriers to practicing religious injunctions rather than dictate religious practices. In the context of hijab, Khan believes in the idea of self-regulation, which he demonstrates through the example of Muslims living in non-Muslim countries. Khan (2019) says:

Muslims in the West already are self-regulating when they abstain from alcohol consumption, eat halal food, women wearing hijabs, praying and fasting, and even

paying Zakat. None of this is mandated by the state but Muslims as self-regulating moral agents observe these Islamic principles. (p. 239)

Feminists and Reformists

The conversation on the enforcement of the hijab will remain incomplete without presenting the views on the other end of the spectrum, the view of Muslim feminists and scholars who diverge significantly from what has been presented by seeking to reinterpret the obligation of the hijab itself, which is something that was not done by either Ghannouchi, Ramadan, Al-Naim or Khan. This is important because the concept of enforcement of the hijab by the state is contingent on the obligatory nature of the hijab. As such, if the hijab is not viewed as a religious obligation, the case for its enforcement by the state cannot be made so easily.

One of those who sought to fundamentally review the obligatory nature of the hijab is Arab feminist, Fatema Mernissi. In her book, *The Veil and the Muslim Elite* (2002), Mernissi presents a methodological analysis of how the hijab came to be. Hashas (2015) mentions that she considered the hijab to have been politicized in the Arab world to reinforce male dominance and to divert attention from more pressing societal challenges, such as democracy, gender equality, and political reform. Fatema's views are echoed by the likes of Amina Wadud, a well-known American Muslim scholar (Diani, 2020), and Siti Kasim, Malaysian human rights lawyer and activist (Wain, 2021). However, this view is not restricted to women scholars and activists alone. Khaled Abou El Fadl (2016) has controversially argued for the permissibility of not wearing the hijab, he states:

"It bears emphasis that if one takes both Qur'anic revelations, what seems clear to me is that the Qur'an is placing great emphasis on modesty and humility. The narratives on *khimār* and *jilbāb* do not necessarily generate the kind of uniform and determinative headgear and attire known as the hijab in our contemporary age...There is nothing uniquely Islamic about the hijab except for the fact that Muslim social movements, at least since the late 1970s, have chosen to make it a part of Islamic catechism. In my view, humility, modesty, and personal piety are far more worthy in Allah's eyes than any formal physical attire regardless of its sanctified appearance."

Similarly, as Ridgeon (2021) has shown, well-known Iranian clerics such as Ahmad Qabil and Muhsin Kadivar also challenge the notion of that hijab is a mandatory religious obligation. Like Abou El Fadl, Qabil asserts that the Quran emphasizes modesty rather than a specific head covering. He contends that verses often cited to support the hijab's obligation lack explicit mention of head covering and instead focus on broader concepts of modesty and the covering of *awrah*. Likewise, Kadivar also posits that the hijab as a practice is not divinely mandated. He argues that the Quran does not prescribe a specific form of dress and that interpretations of modesty should be contingent on the social and cultural context of "time and place." Finally, both scholars emphasize the absence of Quranic or prophetic support for punishing women who choose not to cover their heads.

Modern debates on hijab enforcement are not merely about Islamic jurisprudence but also about how Islamic governance, personal freedoms, and public morality intersect in a rapidly changing world. Any contemporary approach to the

issue must consider both the historical role of the state in enforcing Shariah and the realities of modern pluralistic societies where governance operates under different principles than in the pre-modern era.

Analysis

In the previous sections, the researcher presented different classical and contemporary views on the idea of hijab enforcement. One aspect that stands out is the lack of discussion on the idea of the enforcement of the hijab in classical sources. Today, the hijab is a quintessential part of a Muslim woman's identity and is often considered a visible marker of not only her individual religiosity and piety but also that of her society and even the state.

If the hijab is such a cornerstone of Muslim female identity as it is perceived today, one expects to find more discussion on the hijab and its enforcement beyond the limited mention of merely its physical extent and obligation in the classical sources that form the foundation of Muslim thought. Why is it that the hijab and its enforcement have come under the spotlight only in the post-modern era and onwards and not before that? Is it because the earlier Muslim community did not consider the hijab to be of such a level of importance that would warrant its enforcement by the state?

To answer the above question, one must understand that classical sources reflect the political and social realities of their times. As such, an exploration of the social and political dynamics of the time will lead to interesting answers. The researcher believes that there are two primary reasons why hijab enforcement is not mentioned explicitly in classical Islamic sources. The first reason is social, and the second is political.

Social Reason

In Muslim societies in the past, the norms of modest dress and hijab were already widely practiced and ingrained in the culture and were indirectly enforced through social pressures and community dynamics. So, there was no pressing need for the state to explicitly enforce the hijab. Additionally, it's important to recognize that historically, modest dress, which included clothing that resembles the khimar and jilbaab in form and function, was not exclusive to the Muslim world. Traditional dress codes in other parts of the world (for example, ancient Rome) were also influenced by their own religious and cultural values that emphasized modesty and (Burbano, 2016), therefore, were not too different from what Muslim women wore in the Muslim world.

The shift toward immodest or revealing attire in the West is a relatively recent phenomenon, primarily emerging in the 20th century, driven by social, economic, and political changes. The primary of these changes was the sexual revolution during the 1960s and 1970s, which was characterized by a departure from traditional attire toward more liberal expressions of individualism and body autonomy. The revolution, driven by feminist movements, rejected conservative social norms and promoted the idea that women should have the freedom to dress as they wished (Heng et al., 2021). Modesty in dress, which had been common across many cultures globally, was

increasingly seen as restrictive or outdated. From this perspective, the Muslim world's retention of modest attire, including the hijab, was not an anomaly but rather a continuation of the global norms that had existed for centuries.

The Western shift toward immodest attire was perceived as a symptom of moral decay, individualism, and the breaking down of traditional family values by the Islamic revivalist thinkers such as Maududi (1939). Islamist movements like the Muslim Brotherhood or Jamaat-e-Islami emphasized the hijab as part of their call for an Islamic social order, seeing it to protect Muslim women and Muslim society from the moral and social degradation of the West. Furthermore, some states like Iran and Saudi Arabia went a step ahead and adopted policies to enforce hijab in the state. The hijab, therefore, became more than just a religious obligation; it also started to increasingly be viewed as a symbol of resistance to Western cultural dominance and secularization.

This major social change that has taken place in the last 100 years between the Muslim world and the West can help explain why the question of hijab enforcement started to gain prominence only in recent times and does not find itself discussed in classical sources. The dichotomy between modest and immodest has never been more prevalent and prominent.

Political Reason

Another reason that can explain the lack of discussion on hijab enforcement in classical sources is political and administrative in nature. In classical Islamic societies, the state did not function the same way as modern nation-states, with centralized power and a legal apparatus powered by technology that could regulate all aspects of life. Instead, governance was often decentralized and localized, and legal enforcement was more fragmented (Hallaq, 2013). The lack of a centralized, modern state meant that there was no effective apparatus for systematically enforcing personal religious obligations like the hijab. An interesting parallel to this is the fact that although classical jurists have spoken in favor of enforcement and punishment for abandoning the obligatory prayer, which consisted of flogging, imprisonment, and, in some cases, the death penalty, there is no historical evidence that this was implemented by the state.

It was only with the emergence of modern nation-states in the post-colonial period and the rise of Islamist movements that hijab enforcement came to the forefront and became a legal and political issue. Modern nation-states, equipped with centralized legal and law enforcement systems, now had the tools and technology to monitor and regulate personal behavior in ways that classical states could not. For instance, in Iran, electronic surveillance was employed to enforce the hijab under the new 2024 chastity law (Kahalzadeh, 2024). This shift allowed for the possibility of state-mandated hijab enforcement, which would have been logistically and politically unfeasible in the classical era.

RECOMMENDATION

Towards an Islamic Framework of Regulating Public Morality and Modestly

Taking all the above perspectives into account, this research aims to develop a balanced framework that offers a fresh perspective on state-enforced hijab. By integrating classical Islamic thought and contemporary debates, the paper seeks to contribute a more holistic and sustainable solution to the ongoing discourse surrounding hijab enforcement in Muslim societies.

Every society, including liberal secular ones, legislates modesty and sets minimum expectations of modesty in public life. The idea that there should be some level of dress code regulation is not uniquely Islamic. Even in the most liberal countries, complete public nudity is generally restricted, and certain attire is deemed inappropriate for specific settings, such as workplaces, schools, or government offices (Friedman & Grossman, 2013). Thus, the crux of the hijab enforcement debate is not about whether modesty exists as a socio-legal requirement but rather about who sets the boundaries, how those boundaries are justified, and on what basis it is legislated and enforced.

In this regard, the key distinction between an Islamic framework and a secular liberal framework lies in two aspects: (1) the extent of the required covering and (2) the source of legitimacy for these requirements. The Islamic framework derives its entire moral and legal structure from the Qur'anic worldview, where the parameters of modesty are divinely ordained and tied to the broader goal of preserving social harmony and moral integrity (AbuSulayman, 2011). In contrast, the secular liberal paradigm bases its expectations on human reason, cultural evolution, and societal consensus, which are subject to change over time. What was considered modest attire in Western societies a century ago is starkly different from today's standards.

From this perspective, the notion that a society should prescribe some minimum level of modesty is not controversial. The real debate is about whether these standards should be shaped by religious revelation or by human reasoning and cultural trends. The Islamic paradigm provides a fixed moral foundation, while the secular framework operates on moral relativism. This distinction is at the heart of modern discussions on hijab enforcement and the role of the state in regulating public morality.

The researcher holds that a Muslim society should establish a minimum legal prescription for modesty based on the Quranic worldview, with the state holding the legitimate authority to set basic expectations and standards in this regard. Modesty is a core value in Islamic ethics and a fundamental component of public morality, and the hijab is an expression of that. However, while the state plays an essential role in preserving public decency, the methods through which modesty and hijab are promoted and upheld are critical to ensuring both religious sincerity and societal harmony. Enforcement and compliance should not be driven solely by top-down legal mechanisms that impose dress codes through punitive measures. Instead, the cultivation of modesty, including adherence to the hijab, should primarily be pursued through public awareness campaigns, educational programs, and community-driven initiatives that foster an internalized commitment to Islamic values.

As Muqtedar Khan (2019) argues, Muslims have demonstrated the ability to self-regulate their religious obligations, even in secular societies where Islam is not legally enforced and the societal pressure to act against Islamic standards is

constantly present. Practices such as prayer, fasting, and wearing the hijab are voluntarily observed by Muslims living in non-Muslim countries. This principle is consistent with the Prophetic Sunnah and the gradual approach of the Quranic revelation. Aisha (RA), the wife of the Prophet Muhammad ﷺ, narrated that the initial revelations focused on matters of the Hereafter, rather than immediately imposing prohibitions or legal commands. Only after the early Muslim community had embraced Islam and developed a strong foundation of faith did the Quran begin to introduce injunctions related to lawful and unlawful matters. Aisha (RA) emphasized that had the first commandments instructed people to abandon deeply ingrained practices such as alcohol consumption or illicit relationships, they would have resisted, saying that they would never give it up (Al-Bukhārī, 2001). This gradualism highlights the importance of fostering internal transformation before expecting external compliance. Applying this principle to the issue of legislating modesty under Islamic governance suggests that cultivating an environment where people willingly embrace the hijab and other modesty norms is more effective and sustainable than coercing compliance through punitive threats.

Nonetheless, the state still holds a crucial responsibility in safeguarding public morality and ensuring that immorality is not openly promoted or normalized in ways that undermine the ethical fabric of society. This responsibility does not entail micromanaging individual choices or intruding into private spaces but involves setting boundaries that prevent the public display of indecency and protect communal values. In this regard, the state should adopt a regulatory approach that prevents the proliferation of behaviors or media that trivialize modesty or glamorize immodesty, while simultaneously encouraging positive representations of modest living.

Importantly, any enforcement of modesty standards must be carefully balanced to avoid the pitfalls of heavy-handed policies that prioritize outward conformity over spiritual growth, such as those scenes in Iran. When hijab is enforced rigidly, without sensitivity to individual circumstances or consideration for the broader goal of nurturing faith, it can breed resentment and hypocrisy. Individuals may comply externally out of fear of punishment rather than out of a sincere belief in the importance of modesty. Such an approach risks alienating people from religious practices, ultimately undermining the very objectives it seeks to achieve.

To navigate these complexities, the use of a *maqasid* framework provides a valuable lens through which enforcement policies can be evaluated (Basma, 2018). Modesty should be promoted in ways that align with the Shariah's overarching objectives. If enforcement measures lead to widespread hostility toward religious observance, increased public disillusionment, or alienation from Islamic teachings, as has been observed in countries like Iran, as noted by Maleki & Arab (2020), then such policies have failed to fulfill their intended purpose. A balanced approach involves creating an environment where modesty and hijab are both culturally normalized and individually valued. This can be achieved through various non-coercive strategies, such as incorporating modesty education into school curricula, promoting public campaigns that celebrate modest fashion, and fostering religious literacy that explains the spiritual significance of hijab and modest dress. Moreover, providing safe spaces

for open dialogue about modesty, faith, and personal struggles can help individuals navigate their religious journeys without feeling judged or marginalized.

Ultimately, the goal is to shape hearts and minds so that modesty is embraced as a virtue rather than merely imposed as a legal requirement. In such a society, the hijab becomes not just a piece of cloth or a legal obligation but a meaningful expression of faith. By prioritizing education, public engagement, and spiritual development over strict enforcement, governments in Muslim countries can achieve a more sustainable and authentic embodiment of Islamic values, one that respects individual agency while nurturing a culture of modesty rooted in genuine belief rather than fear of authority.

CONCLUSION

Hijab enforcement by the state remains a contentious issue. In classical Islamic thought, the state should implement the Shariah; however, detailed discussions on hijab enforcement are largely absent. Historical challenges, such as colonial campaigns and Western cultural influences, positioned the hijab as both a symbol of resistance and a marker of Islamic identity. Some thinkers advocate for hijab enforcement as essential to an Islamic social order, while others oppose state enforcement.

The paper argues that legislating modesty is not exclusive to Islam; societies do legislate, enforce, and impose some standard of acceptable minimum dress. Therefore, the real debate is whether these norms should be shaped by religious doctrine or changing social values, and to what extent. In this regard, the paper contributes a novel perspective by integrating classical Islamic political thought with contemporary realities through a *maqasid al-shariah* lens and suggests that, under the broad implications of classical Islamic political thought, Muslim societies can and should establish minimum standards of modesty based on Islamic values. However, the method of enforcement must prioritize education, social awareness, and voluntary internalization rather than coercive legal measures. Overly aggressive enforcement risks producing resentment, hypocrisy, and alienation from religious observance, ultimately undermining the higher objectives of Shariah itself. As mentioned earlier, even in the Prophet's time, legal obligations were introduced gradually, and the ultimate goal should be to foster a culture of modesty, where compliance arises from genuine conviction, and not entirely from state pressure.

Hijab enforcement is not merely a theological or legal question but a deeply political and social one. The debates surrounding it reveal several different dynamics connected to the issue and shaping it in different ways. A nuanced understanding of these dynamics is essential for addressing the contemporary challenges of hijab enforcement in a way that aligns with Islamic principles and societal realities in diverse contexts. Further empirical research on how different enforcement models impact religious commitment and social harmony in various Muslim societies would provide valuable insights for advancing this discourse.

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