

*With the Name of Allah, All-Merciful, Most Merciful*

# **THE VEIL: BETWEEN TRADITION & REASON, CULTURE & CONTEXT**

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## **1. Traditional interpretations regarding women's dress**

Of over six thousand *ayat* of the Qur'an, only about half a dozen refer specifically to the way a woman should dress and/or walk in public. Only two *ayahs* mention items of clothing, i.e. the *khimar* (headcover) and *jilbab* (outer garment) respectively. It is a sad reflection on contemporary Muslim discourse that these issues are usually given far more coverage than the above statistics would suggest, with the issue of women's dress blown out of all proportion to the far more fundamental and essential Qur'anic themes of faith, prayer, charity, spiritual purification and progress, and the constant remembrance of God.

The noble Qur'anic term of *hijab*, which in its highest sense refers to the veil between humanity and God that is lifted in the Hereafter for those who purify their souls sufficiently<sup>1</sup>, has been reduced and incorrectly applied in modern discourse to a mere piece of clothing, for which the correct Qur'anic term is *khimar* (headcover). The term *hijab* has many Qur'anic meanings, none of them to do with dress. The closest meaning to dress is the "curtain" mentioned in the "*ayah of hijab*" that has nothing to do with headscarves or face-veils, but rather with gender-segregation in the Prophet's household.

Traditional interpretations of the two *ayahs* that mention the *khimar* and *jilbab* are now analysed, with a view to arriving at a holistic reading of the issue, which thus provides a link to the theory of *Maqasid al-Shari'ah* or the higher objectives of Islamic law.

### **1.1 The *ayah* of the *khimar* (headcover)**

*Say to the believing men that they should lower their gaze and guard their modesty: that will make for greater purity for them: And Allah is well acquainted with all that they do.*

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<sup>1</sup> Cf. Qur'an, *Surah al-Mutaffifin* (The Fraudsters), 83:15; "God's veil is Light," as stated in a hadith of *Sahih Muslim*, "... were it to be removed, the emanations from His Countenance would destroy everything upon which the Divine Gaze fell."

*And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers or their brothers' sons, or their sisters' sons, or their women, or the slaves whom their right hands possess, or male servants free of physical needs, or small children who have no sense of the shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments. And O ye Believers! turn ye all together towards Allah, that ye may attain Bliss.*<sup>2</sup>

Regarding this subject, this part of the *ayah* is often quoted: "They should not display their beauty and ornaments except what (must ordinarily) appear thereof."<sup>3</sup>

This part of the *ayah* is understood by the commentators and jurists to classify a woman's *zinah* (adornment, ornaments, especially cosmetic make-up and jewellery) into two types: *zahirah* (apparent adornment) and *batinah* (hidden adornment). The latter type, which she is asked to conceal, is implied by the explicit mention of the former<sup>4</sup>, which she is allowed to reveal, since it is apparent by its very nature.

The following are some of the views of early authorities from the earliest generations of Islam, according to various commentators and jurists.

Imam Tabari<sup>5</sup> quotes a large number of authorities to support his view that this *ayah* means that a woman should cover up in public, except for her face and hands. She is thus permitted to display her face and hands as well as any jewellery or cosmetic make-up that is visible in these parts of the body, such as rings, eye-shadow or eye-liner and henna. Thus, the face and hands, along with the make-up and jewellery worn there, constitute the *zinah zahirah* (apparent adornment) that is ordinarily visible in public. The authorities from whom this view is quoted include: Ibn 'Abbas<sup>6</sup>, 'Ata' b. Abi Rabah, Sa'id b. Jubayr, Qatadah, 'Amir b. Shurahil, Ibn Zayd, Dahhak and al-Awza'i. Some later jurists insisted that if a woman wears make-up or jewellery in her face and hands, these must be covered.<sup>7</sup>

Tabari adds that there are one two traditions from the Prophet (may Allah bless him and grant him peace), via Qatadah and 'Aishah respectively, that allow a woman to uncover

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<sup>2</sup> Qur'an, *Surah al-Nur* (The Light), 24:30-31. All translations are taken from 'Abdullah Yusuf 'Ali, *The Meaning of the Holy Qur'an*, Amana Publications, USA, 10<sup>th</sup> ed., 1424/2004.

<sup>3</sup> Qur'an, *Surah al-Nur* (The Light), 24:31

<sup>4</sup> Qadi Abu Bakr ibn al-'Arabi (468-543 H), *Ahkam al-Qur'an* (*Legal Rulings of the Qur'an*), ed. 'Abd al-Razzaq al-Mahdi, Dar al-Kitab al-'Arabi, Beirut, 1421/2000, vol. 3, p. 285

<sup>5</sup> Al-Tabari, *Tafsir*, Dar al-Kutub al-'Ilmiyyah, Beirut, 1412/1992, vol. 9, pp. 303-7

<sup>6</sup> Ibn 'Abbas says, in one of the narrations transmitted by Tabari, that such "apparent adornment" may also be displayed at home to men who enter the woman's house. It is also known from numerous ahadith that male and female Companions would visit each other with their spouses. Ibn al-'Arabi mentions the hadith that proves that many of the male Companions used to visit the elderly female Companion Umm Shurayk. Thus, it is not an Islamic requirement to have gender-segregation at home, but a matter of culture and tradition.

<sup>7</sup> Ibn al-'Arabi, vol. 3, p. 285

her wrist or half her forearm. Hence, some of the early authorities also extended a woman's "apparent adornment" to any bangles that she wears.<sup>8</sup>

With the "apparent adornment" as described above, Tabari asserts that the "hidden adornment" is therefore the rest of the body, including any cosmetics applied or jewellery worn there, such as necklaces, earrings and anklets. He explains that the command, "... and they should draw their veils (headcovers) over their bosoms ..."<sup>9</sup> also means that women should cover their hair, necks and earrings.

Further, he mentions the other major view about this *ayah*, i.e. that the "apparent adornment" refers to a woman's normal (outer) clothing, since clearly, this will always be visible in public. This view is that of the following authorities: Ibn Mas'ud, Ibrahim al-Nakh'i and al-Hasan al-Basri. For example, Ibn Mas'ud is reported to have said that the "apparent adornment" is the shawl or other wrapper worn over the upper body. However, Jassas argues that this view makes no sense since it is the parts of the body that are relevant: it is perfectly permissible to look at women's clothing or jewellery when these are not being worn. The authorities who mentioned eye-liner, henna or rings were effectively referring to the face and hands, but similar logic cannot apply to the mention of clothing.<sup>10</sup>

Qurtubi states that "adornment may be apparent or hidden ... As for hidden adornment, it is not lawful to reveal it except to those whom Allah Exalted has named in this *ayah*, **or their equivalent.**"<sup>11</sup> (emphasis added)

Thus, according to Qurtubi, other males besides the close male relatives mentioned in this *ayah* may see the hidden adornment of women. Such males are primarily those mentioned in the penultimate category, i.e. those who have no sexual appetite for the women concerned. According to Ibn al-'Arabi, on the authority of several Successors, this category includes the following: the impotent, the insane, the elderly, the starving and the servant.<sup>12</sup> The implication is that the servant has effectively become part of the family.

Ibn Kathir says that, due to the command to believing women to lower their gazes, "many people of knowledge hold that a woman is not allowed to look at men who are not her close relatives at all, whether or not her glances are lustful," but quotes no such thing with regard to the gazes of men, even though there is an identical *ayah* relating to them.<sup>13</sup> He further says that the command to cover the bosom applies to the chest and midriff.<sup>14</sup>

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<sup>8</sup> Ibn al-'Arabi, vol. 3, p. 285, where he states that 'Aishah and Mujahid, the student of Ibn 'Abbas, disagreed respectively as to whether bangles were apparent or hidden adornment, based on whether they were worn on the hands (i.e. wrists) or forearms.

<sup>9</sup> Qur'an, *Surah al-Nur* (The Light), 24:31

<sup>10</sup> Jassas, vol. 3, p. 316

<sup>11</sup> Abu 'Abdullah Muhammad b. Ahmad al-Ansari al-Qurtubi, *al-Jami' li Ahkam al-Qur'an* (commonly known as *Tafsir al-Qurtubi*), Dar Ihya' al-Turath al-'Arabi, Beirut, 1965, vol. 12, p. 227.

<sup>12</sup> Ibn al-'Arabi, vol. 3, p. 290

<sup>13</sup> Ibn Kathir, vol. 3, p. 311

<sup>14</sup> Ibn Kathir, vol. 3, p. 312

## 1.2 The *ayah* of the *jilbab* (body wrapper)

*O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as such) and not molested. And Allah is Oft-Forgiving, Most Merciful.*

*Truly, if the Hypocrites, and those in whose hearts is a disease, and those who stir up sedition in the City, desist not, We shall certainly stir thee up against them: Then will they not be able to stay in it as thy neighbours for any length of time.*<sup>15</sup>

The traditional commentators are generally agreed that this *ayah* was revealed in the context of sexual harassment by the “hypocrites, perverts and mischief-makers” towards the women of Madinah, especially female slaves, but including even the wives of the Prophet (may Allah bless him and grant him peace). There is agreement that the commandment in this *ayah* is for free women, whose dress should distinguish them from slaves. This interpretation is affirmed by Tabari, who also attributes it to Ibn ‘Abbas.<sup>16</sup>

There remains the issue of what constitutes a *jilbab*. Qurtubi states that the correct view is that it is a garment that covers the whole body: God has commanded all women to cover up, and this can only be done with clothing that is not skin-tight. However, he admits that it is reported from Companions of the Prophet (may Allah bless him and grant him peace) such as Ibn ‘Abbas and Ibn Mas’ud that the *jilbab* is no more than the *rida*, i.e. a shawl or wrapper for the upper body. He further mentions a minority view that the *jilbab* refers to the headcover, face-veil or mask.<sup>17</sup> Ibn al-‘Arabi repeats the explanations of Tabari and Qurtubi in extremely concise form.<sup>18</sup>

Ibn Kathir adds that the *jilbab* should further distinguish free Muslim women from the women of the Era of Ignorance (*jahiliyyah*), and that it is to be a shawl or wrapper worn over the headcover, and known as an *izar* (also a wrapper) in his times.<sup>19</sup> He also quotes from Sufyan al-Thawri that it would be allowed in principle to look at the adornment (i.e. bodies and/or jewellery) of *dhimmi* women (non-Muslims under Muslim rule), but that this is forbidden due to the fear of temptation arising, not because their beauty is sacred. His reasoning is that the *ayah* commands only Muslim women to cover up (implying that non-Muslim women need not cover), so that it is known that they are free women, and not slaves or prostitutes.<sup>20</sup>

Qurtubi agrees with Tabari that this *ayah* orders free women, as opposed to slaves, to be known as such from their dress. He goes on to say, “It has been said that it is now

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<sup>15</sup> Qur’an, *Surah al-Ahzab (The Combined Forces)*, 33:59-60

<sup>16</sup> Tabari, *Tafsir*, vol. 10, pp. 331-2.

<sup>17</sup> Qurtubi, vol. 14, p. 243. The word *qina*’ can refer to any of these three possibilities.

<sup>18</sup> Ibn al-‘Arabi, vol. 3, p. 496

<sup>19</sup> Ibn Kathir, vol. 3, p. 569

<sup>20</sup> Ibn Kathir, vol. 3, p. 570

obligatory upon all women, whether free or slaves, to cover up entirely, including their faces.” The woman, all of her, is private (*‘awrah*): her body and voice.” He then mentions that the most chaste women he saw on his travels were those of Nablus, where they would only come out of their houses on Fridays, fully-covered, in order to attend the congregational prayer.<sup>21</sup> Interestingly, his fellow-Andalusian Ibn al-‘Arabi repeats the same statements, almost verbatim, adding that Nablus was thus the best of “almost one thousand villages” that he had visited.<sup>22</sup> Both Andalusian commentators also mention that they saw “many chaste women” in spiritual seclusion (*i’tikaf*) in the Furthest Mosque (*Masjid al-Aqsa*) in Jerusalem, remaining there until death.

Ibn al-‘Arabi observes that excessive covering would defeat the purpose of being recognised that is mentioned in this *ayah*, and that therefore the point of this *ayah* is not to obligate excessive covering, but for free women to distinguish themselves from slaves who “walk bare-headed, or with a face-mask only [i.e. without a headcover or wrapper].”<sup>23</sup> In contrast, Tabari and Qurtubi remark that it is not the recognition of individuals that is meant here, but of the class of free women as opposed to slaves.

It should be noted that the standard explanation of the context of this *ayah* has been severely challenged by the Andalusian scholars Ibn Hayyan and Ibn Hazm, and by the modern Hadith scholar Albani.

Ibn Hayyan remarks in his commentary on the Qur’an, “The strongest view is that ‘believing women’ covers both free women and slaves. More temptation is caused by slaves because of their more frequent coming and going compared to free women. Therefore, excluding female slaves from the generality of women needs clear textual indication [which is not found].”<sup>24</sup>

Ibn Hazm says about the standard explanation, “We absolve ourselves of this corrupt explanation that is a slip-up of a person of knowledge, a blunder by a respected, intelligent man or a fabrication by a wicked liar! This is because it says that Allah has given free rein to the perverted to attack the dignity of Muslim maidservants, and this is an eternal affliction! However, no two people of Islam disagree that molestation of, or fornication or adultery with, a slave-woman is as prohibited as that with a freewoman, as are the subsequent criminal punishments, with no difference between the two cases. For this and other reasons, it is incumbent that we must not accept the saying of anyone after the Messenger of Allah, may Allah bless him and grant him peace, unless they attribute it to him, peace be upon him.”<sup>25</sup>

Ibn Hazm seems to be referring to Tabari and other traditionalist commentators at the beginning of the above polemic. At the end of it, he is referring to ‘Umar b. al-Khattab,

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<sup>21</sup> Qurtubi, vol. 14, p. 244.

<sup>22</sup> Ibn al-‘Arabi, vol. 3, p. 451

<sup>23</sup> Ibn al-‘Arabi, vol. 3, pp. 496-7

<sup>24</sup> Ibn Hayyan, *al-Bahr al-Muhit*, vol. 7, p. 250, as quoted in Albani, p. 44

<sup>25</sup> Ibn Hazm, *Al-Muhalla*, vol. 3, pp. 218-9, as quoted in Albani, p. 45

since all the commentators quoted in this article agree that he used to forbid slave-women from dressing like freewomen.

On the basis of this counter-argument, Albani refutes an unnamed contemporary author who had argued that the order to wear *jilbabs* was specific to a particular time. For Albani, this argument is dangerous since it leads to abrogation of the necessity of the *jilbab*, since modern Muslim societies no longer have slavery.<sup>26</sup>

### 1.3 The *ayah* of the *hijab* (curtain)

*And when ye ask (his ladies) for anything ye want, ask them from before a screen: that makes for greater purity for your hearts and for theirs.*<sup>27</sup>

As clear from its text, this *ayah* obliged the Prophet's wives to be segregated from male visitors to his household.<sup>28</sup> The traditional commentators disagree as to whether or not this applies to all Muslim households, or just to that of the Prophet, may Allah bless him and grant him peace.

The word *hijab* mentioned in this *ayah* clearly refers to a curtain that effects segregation of the sexes.<sup>29</sup> Variants of the word *hijab* used in various ahadith also refer to a "veil" in the sense of a curtain, screen or other means of segregation, but never in the modern meaning of "headcover" that is popularly associated with the word "*hijab*." For example, the Prophet's order to his wife Sawdah bt. Zam'ah to "veil herself" (*ihtajibi*) from 'Abd b. Zam'ah, an illegitimate son of her father, and to his wives Umm Salamah and 'Aishah (or Maymunah, according to a different narration) to "veil themselves" (*ihtajiba*) from the elderly, blind Companion, 'Abdullah b. Umm Maktum. In the latter case especially, "veiling" clearly refers to segregation and not covering, since the point was that they should not be looking at him; he, of course, was unable to look at them. The Hadith scholars Ahmad b. Hanbal and Abu Dawud held that this particular instruction was specifically and only for the Prophet's wives.<sup>30</sup>

### 1.4 The *ayah* of *tabarruj* (flaunting oneself in public)

*O Consorts of the Prophet! Ye are not like any of the (other) women: if ye do fear (Allah), be not too complacent of speech, lest one in whose heart is a disease should be moved with desire: but speak ye a speech (that is) just.*

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<sup>26</sup> Albani, p. 45

<sup>27</sup> Qur'an, *Surah al-Ahzab (The Combined Forces)*, 33:53

<sup>28</sup> For a fascinating discussion of this *ayah* and related issues from a feminist, social-science perspective, see Fatima Mernissi, *The Veil and the Male Elite*, Perseus, USA/Canada, 1991.

<sup>29</sup> Cf. Qur'an, *Surah Maryam (Mary)*, 19:17, where the Virgin Mary uses a screen (*hijab*) to isolate herself from others.

<sup>30</sup> Ibn al-'Arabi, vol. 3, p. 284. The authenticity of the latter hadith is disputed.

*And stay quietly in your houses, and make not a dazzling display, like that of the former Times of Ignorance; and establish regular Prayer, and give regular Charity; and obey Allah and His Messenger. And Allah only wishes to remove all abomination from you, ye members of the Family, and to make you pure and spotless.*<sup>31</sup>

Ibn al-‘Arabi understands the *ayah*, which is primarily directed at the Prophet’s household, to mean that all women must stay at home, unless it is necessary for them to come out in public. However, he defends ‘Aishah’s return journey of hundreds of miles from Madinah to Basra during the incident of the “Battle of the Camel” as being one of public necessity, since she intended reconciliation and peace in difficult political circumstances, and enjoyed much support from her followers.<sup>32</sup>

As for *tabarruj* (flaunting oneself in public), Ibn Kathir quotes different authorities as saying that this refers to women walking in front of men<sup>33</sup> (Mujahid), walking with coquettish or lascivious movements such as the swaying of hips in order to excite sexual passion (Qatadah), or to wearing a headcover that is loose or untied such that her necklaces, earrings and neck are visible (Muqatil b. Hayyan).<sup>34</sup>

## **1.5 The hadith of Asma’ about revealing only the face and hands in public**

This is perhaps the most commonly-quoted hadith on the subject: ‘Aishah, wife of the Prophet (may Allah bless him and grant him peace), narrated that her sister Asma’ visited the Prophet whilst wearing transparent clothing. The Prophet is said to have averted his gaze and observed that an adult woman must cover up in public, except for her face and hands.

Amongst traditionalist jurists, a major disagreement over women’s dress is whether or not she must cover her face in public. Hence, this hadith is highly controversial in such discussions. In fact, the scholars of Hadith, including Abu Dawud, the main transmitter of this report, generally agree that this narration is not authentic, since the narrator from ‘Aishah, Khalid b. Durayk, never actually met her.<sup>35</sup>

Furthermore, it is argued that Asma’, sister-in-law of the Prophet, wife of the esteemed Companion al-Zubayr b. al-‘Awwam and mother of the great Muslim figures, ‘Abdullah b. al-Zubayr and ‘Urwah b. al-Zubayr, was known to be a woman of great piety: it is unthinkable that she would have appeared in public wearing revealing or transparent clothing. Thus, the jurists who argue that covering the face is obligatory are adamant that this hadith is inadmissible in legal discussions of the topic.

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<sup>31</sup> Qur’an, *Surah al-Ahzab (The Combined Forces)*, 33:32-33

<sup>32</sup> Ibn al-‘Arabi, vol. 3, pp. 450-2

<sup>33</sup> Traditional commentary on Qur’an, *Surah al-Qasas (The Story)*, 28:26, has Moses’ eventual wife and her sister walking behind him, throwing pebbles to inform him of the way to their father’s house.

<sup>34</sup> Ibn Kathir, *Tafsir al-Qur’an al-‘Azim*, Dar al-Fayha’, Damascus/Beirut, 1413/1992, vol. 3, p. 531

<sup>35</sup> Ibn Kathir, vol. 3, p. 312; Muhammad Nasir al-Din al-Albani, *Hijab al-Mar’ah al-Muslimah (The Muslim Woman’s Veil)*, 2<sup>nd</sup> ed., al-Maktab al-Islami, Beirut/Damascus, 1385, p. 24.

On the other hand, the jurists who insist on the legal verdict given in this hadith say that the narration is strengthened by numerous others which show that female Companions did not always cover their faces in public, even after the revelation of the *ayat* discussed earlier.<sup>36</sup>

Clearly, many of the early jurists did not regard this hadith as authentic and opposed the strict restrictions given therein, so that the hadith is ignored by both those who take a stricter view and those who take a less restrictive view than the one it expresses. For example, Imam Abu Hanifah famously did not require women to cover their feet in public. Tabari chose not to quote the “face and hands” hadith as a final arbiter on the subject, but mentioned the ahadith that extend this permission to the wrist and half of the forearm.<sup>37</sup>

Since the hadith of Asma’ is not authentic, and given the diversity of views of the jurists on the topic, it can be argued that the Prophet (may Allah bless him and grant him peace) did not specify exactly which parts of her body every woman should cover or display to every person who sees her, but taught general values and guidelines that would adapt according to time, place, context and culture. This is a holistic reading of the texts that is characteristic of the approach to Islamic law in terms of its higher objectives, the *Maqasid al-Shari’ah*, and is especially relevant to Muslims living as minority faith-communities yet full citizens in relatively new contexts such as the modern Western world.

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<sup>36</sup> Albani, pp. 24-46. Qadi ‘Iyad states in his commentary on *Sahih Muslim* that the majority of jurists require a Muslim woman to cover up in public, except for her face and hands. (*Sahih Muslim*, ed. M.F. ‘Abd al-Baqi, 4 vols., Dar al-Fikr, Beirut.)

<sup>37</sup> During 2007-8, the UK government’s Department of Health introduced a “bare below the elbow” policy for all medical and nursing staff in clinical contact with patients, in order to reduce the incidence of infections. Whilst some Muslims opposed the policy, with some medical staff and students even leaving their professions, others supported it on the basis of the diversity of Islamic legal opinion on the matter of dress, plus the overriding Islamic legal imperative that values medical care and the saving of lives extremely highly.



## 2 Analysis of traditionalist interpretations

The traditionalist discourse around women's dress is usually restricted to the following alternatives: she must cover from top to toe in public, except possibly for the face, hands and feet. The issue of how she dresses in private in the presence of close male relatives is rarely discussed in detail.

Here it is argued that this traditionalist position is itself a product of *ijtihad*, since there are traditional views that would be dismissed in traditionalist circles as ranging from extremely strict to extremely permissive. Examples of such views now follow:

The *ayah* of the headcover allows a woman to reveal her beauty and adornment to close male relatives, but does not specify the form that this may take. The jurists have diverse views on this subject, except with regard to the husband, since the general view there is that there is no such thing as "private parts" between husband and wife.

Jassas reports the following views from different authorities: that a man may look at the hair of his mother, sister, maternal aunt and paternal aunt, but that it is disliked to look at their legs below the knees (Ibrahim al-Nakh'i); it is not allowed for a woman to remove her headcover in front of her brother (Hasan Basri); it is disliked for a man to look or stare at the hair of his daughter or sister (Tawus and Sha'bi). Jassas then provides the rather far-fetched interpretation that these narrations refer to situations where a man may be afflicted with incestuous temptation.<sup>38</sup>

Tabari reports from Qatadah that she may only uncover her head in front of male relatives. He further reports from Ibn 'Abbas that she may display her earrings, necklace and bangles before them, but as for her anklets, upper arms, neck and hair, these can only be displayed before her husband.<sup>39</sup> Ibn al-'Arabi adds that a similar view is reported from Ibn Mas'ud, and adds another view that a woman should cover her face in public but may uncover it in front of her father.<sup>40</sup> Thus, this view would require a woman to cover her head in front of her father and brothers. Ibn al-'Arabi quotes Sa'id b. Jubayr via Ayyub al-Sakhtiyani as saying that a woman may not display her hair in front of her son-in-law, since he is not mentioned in this *ayah*.<sup>41</sup> In fact, similar views to all these mentioned above were espoused in modern times by Mawdudi.<sup>42</sup>

At the other extreme, Mahalli and Suyuti state in their commentary on the Qur'an that a woman only needs to cover her body between the navel and knees in front of her father, brothers and everyone else mentioned in the *ayah* of the headcover, and that therefore she may appear topless in front of them.<sup>43</sup> It should be noted that Suyuti was a Shafi'i jurist,

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<sup>38</sup> Jassas, vol. 3, p. 317

<sup>39</sup> Tabari, vol. 9, pp. 303-7.

<sup>40</sup> Ibn al-'Arabi, vol. 3, p. 287

<sup>41</sup> Ibn al-'Arabi, vol. 3, p. 287

<sup>42</sup> Abu 'l-A'la Mawdudi, *Purdah and the Status of Women in Islam*.

<sup>43</sup> Jalal al-Din al-Mahalli and Jalal al-Din al-Suyuti, *Tafsir al-Jalalayn*, Dar al-Ma'rifah, Beirut, n.d., p. 462

and the “navel-to-knees” view of a woman’s *‘awrah* amongst her household is attributed to some of the students of Imam Shafi’i himself.<sup>44</sup>

Most of the commentators mention under the “*ayah* of the headcover” that there are two views about “their women” to whom Muslim women may uncover themselves: all women in general, or other Muslim women only.<sup>45</sup>

Tabari also quotes from Ibn Mas’ud that the “believing women” to whom this *ayah* is addressed refers only to free women, and not to slaves. This interpretation led some jurists to the view that female slaves were only required to cover their bodies between the navel and knees in public, and could therefore walk around topless.<sup>46</sup> The Hanafi jurist al-Jassas says that female slaves are not required to cover their faces or hair, and that even men who are complete strangers may look at their hair, arms, legs below the knees, chests and breasts.<sup>47</sup>

Qurtubi reports on the authority of Imam Zuhri that it is not appropriate for men to look at pretty females, whether they be adult women or young girls.<sup>48</sup> Ibn al-‘Arabi suggests that a woman should perhaps cover in front of young boys, since it is possible that the latter might lust after the former or vice-versa.<sup>49</sup>

Regarding the *ayah* of the *jilbab*, Tabari famously quotes from several authorities, including Ibn ‘Abbas and ‘Abidah, that a woman is required to cover entirely from top to toe, except that she is allowed to uncover one eye, since she needs to see where she is going.<sup>50</sup> The tiny minority of jurists who tried to insist on such a view were perhaps being one-eyed themselves, and unaware of the importance of stereo-vision.

Most, if not all, of the primary narrations quoted in this section from early authorities are of disputed authenticity, which partly explains why the jurisprudence based on them is not mainstream. However, assuming that at least some of them are authentic, they would appear to illustrate that early understanding of these *ayat* was strongly conditioned by culture and context: for example, the insistence by some jurists that a woman must cover her head in front of her father and brothers.

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<sup>44</sup> Ibn al-‘Arabi, vol. 3, p. 291, where he fiercely contests this view, limiting the ruling only to other women.

<sup>45</sup> E.g. see Ibn al-‘Arabi, vol. 3, p. 288

<sup>46</sup> Albani, p. 44

<sup>47</sup> Abu Bakr al-Jassas, *Ahkam al-Qur’an (Legal Rulings of the Qur’an)*, Dar al-Kutub al-‘Arabi, vol. 3, pp. 317 and 372

<sup>48</sup> Qurtubi, vol. 12, p. 227.

<sup>49</sup> Ibn al-‘Arabi, vol. 3, p. 291

<sup>50</sup> Tabari, *Tafsir*, vol. 10, pp. 331-2.

### 3 The Theory of *Maqasid al-Shari'ah* (Higher Objectives of Islamic Law)

The Shari'ah is based on both universal and specific texts, principles and judgments from the Qur'an and the *Sunnah*, the example of the Prophet, peace be upon him. Far from being set in stone, the problem of specifically applying universal principles in Sacred Law has led to a vigorous debate throughout Islamic history and the complex evolution of an extremely diverse body of legal schools and opinions. Within three centuries of the founding of Islam, there were dozens of legal schools, of which about seven remain influential across the Islamic world, both Sunni and Shi'i. An important early debate that continues today was between traditionalists and rationalists over whether the universal principles of God's law were to be known by revelation or reason, or both. The four main areas covered by classical Sharia were: *ibadat* (ritual worship), *mu'amalat* (economics), *munakahat* (marriage, divorce and family) and *jinayat* (crime and punishment).

A significant development in Islamic law between the 5<sup>th</sup>/11<sup>th</sup> and 8<sup>th</sup>/14<sup>th</sup> centuries was the approach to legal purpose known as the theory of *Maqasid*, or the higher objectives of law. Imam Ghazzali (d. 505/1111) argued from a holistic reading of the Qur'an that the purpose of Shari'ah was to fundamentally preserve five matters: faith, life, wealth, intellect and family.<sup>51</sup> This development occurred six centuries before John Locke's articulation of a similar approach to law in England. Over the next three centuries after Ghazzali, theologians such as Ibn Taymiyyah added a number of other "fundamental purposes" of law: preservation of reputations, neighbourhoods and communities; fulfilment of contracts; moral purity; trustworthiness; the love of God. The culmination of this theory came with Shatibi (of Jativa, Andalusia, d. 790/1388), who explicitly synthesised traditionalist and rationalist approaches<sup>52</sup> but Islamic legal theory and practice, once centuries ahead of other civilisations, fell into relative decline for the next half-millennium.

The last century has seen a renewed interest in *Maqasid*, especially amongst Muslim reformers, thinkers and revivalists, since this approach avoids legalistic hair-splitting and attempts to holistically recapture the essential spirit of Islamic law. The significance of this approach may be illustrated by the following quote from one of its masters, Ibn al-Qayyim (d. 751/351), "The Islamic Law is all about wisdom and achieving people's welfare in this life and the afterlife. It is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Islamic Law, even if it is claimed to be so according to some interpretation."<sup>53</sup>

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<sup>51</sup> Ghazzali, *al-Mustasfa min 'Ilm al-Usul*.

<sup>52</sup> Shatibi, in the introduction to his *Muwafaqat*, states that his work is an explicit synthesis of the principles of Ibn al-Qasim and Abu Yusuf, i.e. of Maliki and Hanafi or traditionalist and rationalist principles of jurisprudence.

<sup>53</sup> Quoted in Jasser Auda, *Maqasid al-Shari'ah – A Beginner's Guide*, International Institute of Islamic Thought, London/Washington, 1429/2008.

Recent thinkers such as Hashim Kamali of Malaysia have suggested that the following are “legal purposes” that must be protected and promoted by the Shari’ah: fundamental human rights and liberties; public welfare; education; scientific and medical research; the environment.<sup>54</sup>

In conclusion, it could be said that *Maqasid* theory derives a set of rational legal principles based upon a holistic reading of tradition. The aim is thus to achieve a perfect balance between tradition and reason.

### 3.1 Relaxation of legal rules in times of hardship

The leading contemporary jurist, ‘Abdullah b. Bayyah, has commented on the issue of Muslim women’s dress in western societies, especially when their personal safety may be at risk. He affirms his view that, in normal circumstances, a Muslim woman must cover her hair in public: she is only allowed to uncover her face and hands. However, he quotes Abu Hanifah’s view that the feet may be uncovered, and quotes a minority view mentioned by the late master of Qur’an-commentary and *Maqasid* at Zaytunah University in Tunisia, Ibn ‘Ashur, that a woman may uncover her hair in public.<sup>55</sup> He further states that the obligation to cover her hair during prayer (*salat*) is of a slightly-lesser degree, but only according to Imam Malik. Thus, if a woman prayed bareheaded, she would be encouraged (but not obliged) to repeat her prayer with her head covered, as long as the time for that prayer had not expired.<sup>56</sup>

Ibn Bayyah proceeds to discuss the difference in levels of prohibition and obligation, and between means and ends in prohibitions: the latter are more important than the former. After quoting Shatibi, Ibn al-Qayyim, Qarafi and Ibn al-‘Arabi on these matters, he concludes, “The presence of hardship may thus necessitate the uncovering of parts of the body,” and mentions the hadith of Anas, who “saw the whiteness of the shins” of the Prophet’s wives ‘Aishah and Umm Salamah at the Battle of Uhud, as they hurried around the battlefield, giving water to wounded soldiers with their skirts gathered up.<sup>57</sup>

Throughout his discussion, and from his choice of examples and quotes, Ibn Bayyah strongly implies that he would allow a Muslim woman to uncover her hair in public in Western societies, if this was to avoid hardship. For example, in addition to the points mentioned above, he quotes Shatibi during his discussion as saying, “Clear prohibitions may be violated if there is an overriding benefit involved.” However, it is not surprising that he does not explicitly make this statement, given his strong traditionalist background

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<sup>54</sup> Muhammad Hashim Kamali, *Issues in the Legal Theory of Usul and Prospects for Reform*, Islamic Research Institute, International Islamic University, Islamabad, 2001.

<sup>55</sup> ‘Abdullah b. Bayyah, *Sina’ah al-Fatwa (Crafting Legal Verdicts)*, Dar al-Minhaj, Beirut, 1428/2007, p. 319. cf. Ibn ‘Ashur, *al-Tahrir wa l-Tanwir*, vol. 18, p. 207

<sup>56</sup> ‘Abdullah b. Bayyah, p. 319

<sup>57</sup> ‘Abdullah b. Bayyah, p. 320. The hadith is from Bukhari, *Sahih, Kitab al-Jihad wa l-Siyar (Book of War and Military Expeditions)*, Dar al-Kutub al-‘Ilmiyyah, Beirut, 1423/2002, p. 530, no. 2880.

and membership of extremely-conservative juristic councils such as the Islamic Fiqh Academy based in Mecca and the European Council for Fatwa and Research based in Dublin.

Such hardship may include the likely effects of harassment, social exclusion, alienation or provoking of resentment amongst neighbours.<sup>58</sup>

### 3.2 The importance of local custom and context

Islamic legal theory, including the principles (*usul*) and higher objectives (*maqasid*), emphasises the importance of local custom (*'urf*) and context. For example, Ibn al-Qayyim devotes a long chapter in his detailed work on legal theory to the “Change and diversity of legal judgments (*fatwa*) according to changing times, places, situations, intentions and habits.”<sup>59</sup> Shatibi similarly discusses the issue at great length in his *Muwafaqat*.

An example involving (men’s) dress from a recent traditionalist jurist is interesting. The late Shaykh Muhammad b. Salih b. ‘Uthaymin, a member of the panel of senior religious scholars of Saudi Arabia, discussed the fact that the Prophet (peace be upon him) would often wear no more than two wrappers for the upper and lower body respectively, plus a turban. He then commented that this was no longer the customary dress of the people of Arabia, and that it would be inappropriate to wear such clothing now since this would go against the local custom of wearing a white robe and *ghutra* or head-dress for men.<sup>60</sup>

It should be noted that conforming to local custom in terms of dress is an ancient characteristic of Muslim communities. For example, one reason why the customary public dress in Saudi Arabia and other Gulf states is still limited to a white robe for men and a black *jilbab* for women is to avoid individualism and ostentation in dress: communal life is so important that individuals “melt into the crowd” even in terms of their dress.

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<sup>58</sup> Lord Carey, ex-Archbishop of Canterbury, raised this concern about Muslim women’s dress in parts of the UK at the session on “Islam-West Dialogue” at the World Economic Forum – Middle East, Sharm el-Sheikh, Sinai, Egypt, 2008.

<sup>59</sup> Ibn al-Qayyim, *I’lam al-Muwaqqi’in ‘an Rabb al-‘Alamin*, Dar al-Fikr, Beirut, 1397/1977, vol. 3, pp. 14-70.

<sup>60</sup> Muhammad b. Salih b. ‘Uthaymin (d. 1421/2001), *Commentary on Sahih Muslim* (audio-taped lectures), Taybah Islamic Recordings, Riyadh.

## 4 Muslim women's dress from a holistic, *Maqasid*-based reading of the Qur'an and Sunnah

Based on the above discussions, we are now able to attempt a reading of the Islamic revelation that is holistic, balances tradition with reason and law with spirit, but is yet suited to modern contexts.

The underlying spirit of these texts is clear: it is for men and women to dress and behave with shyness and modesty (*haya'*) in public. The Qur'an mentions that Moses' future wife or sister-in-law came to him, walking bashfully or with shyness and modesty.<sup>61</sup> Further, one purpose of this ethos is to avoid sexualisation of the public space.<sup>62</sup>

### 4.1 The *ayah* of the *khimar* (headcover)

This *ayah* and the preceding one encourages believing men and women to be careful when looking at the opposite sex, to avoid lustful glances and to guard their chastity. Furthermore, women are asked to cover their bosoms.

Traditionalist readings require women to cover their hair in public, but as we have seen, these are strongly conditioned by culture and context: for example, many pre-modern and even modern Western societies had men and women covering their heads in public until the middle of the 20<sup>th</sup> century, as video footage from Europe or the USA will show.

A rationalist reading would argue that uncovered female hair does not generally cause sexual temptation in modern Western societies (and others), and that therefore the requirement to cover the hair should no longer apply. This has been the view of modernist reformers such as Sir Sayyid Ahmad Khan of British India<sup>63</sup> and the late Sheikh Zaki Badawi, former Imam and Khatib of the Regent's Park Mosque and founder of the Muslim College, both in London.

Another argument in this regard would be that the veil (headcover) mentioned in this *ayah* is a means, not an end: the purpose is to cover the chest area, not the head. In response to the question as to why God would then mention the headcover, it is argued that women in Arabia would cover their heads to protect them from the heat of the sun, but sometimes leave their breasts exposed, as found in some Islamic descriptions of the *Jahiliyyah* period and in some Byzantine-era depictions from Syria. Thus, the commandment in this *ayah* comprises a very practical method for covering the bosom, i.e. with an existing and available piece of clothing: the headcover.

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<sup>61</sup> Qur'an, *Surah al-Qasas (The Story)*, 28:25.

<sup>62</sup> This became a national political issue in the UK in 2007, when the Conservative Party complained about the increasing sexualisation of young girls in British society.

<sup>63</sup> Prof. Javed Iqbal (son of Sir Muhammad Iqbal), public televised lecture on Islam and Shari'ah, Pakistan Television, Summer 2003.

Furthermore, it could be argued that the grammatical construction of the command involving headcovers is identical to another Qur’anic commandment to strike terror into the hearts of one’s enemies during war using horses.<sup>64</sup> If a jurist were to maintain a very literal understanding of the *ayah* of the headcover, he or she would be forced to say, for consistency’s sake, that modern warfare can only be conducted with horses, and not with tanks or armoured vehicles.<sup>65</sup>

## 4.2 The *ayah* of the *jilbab* (body wrapper)

The question as to whether or not this *ayah* was supposed to distinguish between slave-women’s and freewomen’s public dress is redundant, given the abolition of slavery throughout the world.

We are left with the simple teaching that a woman must cover up, i.e. dress modestly, in public. The difference of opinion remains as to which body parts she must cover.

In response to those who obligate several layers of clothing for Muslim women, such as a *jilbab* over and above a *khimar* and other clothing, the view of Qurtubi and Ibn al-‘Arabi may be quoted, i.e. that the point of the *jilbab* is to cover the body.

The context of the Qur’anic revelation needs to be borne in mind as well: many of the Prophet’s companions had very little clothing, and often only one garment or piece of cloth that was insufficient to cover the whole body: recorded examples are those of ‘Amr b. Salamah<sup>66</sup>, Mus’ab b. ‘Umayr<sup>67</sup> and the Prophet’s daughter, Fatimah.<sup>68</sup> Even whole rows of men were in this position whilst praying, with short garments tied above their shoulders such that their private parts were barely covered, and their legs were bare: the women in the rows behind were commanded not to raise their heads from prostration until the men were sitting with folded legs.<sup>69</sup> Needless to say, underwear was virtually unknown. Hence, when the Prophet was asked whether it was acceptable to pray in one garment, he replied, “Does each of you have two garments?”<sup>70</sup>

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<sup>64</sup> Qur’an, *Surah al-Anfal (Spoils of War)*, 8:60

<sup>65</sup> Interestingly, it is reported that the extremist Egyptian group, *al-Takfir wa l-Hijra*, followed just such a line of reasoning in the 1960’s when they “emigrated” from Cairo to the desert and encamped there, training for military action only with horses, which were no match for Nasser’s tanks that decimated the would-be revolutionaries (Jasser Auda, *Understanding the Spirit of Islamic Law* – a lecture at the City Circle, London, 16<sup>th</sup> May 2008).

<sup>66</sup> Bukhari, *Sahih*.

<sup>67</sup> Bukhari, *Sahih*.

<sup>68</sup> Ibn Kathir, vol. 3, p. 313, quoting a hadith transmitted by Abu Dawud.

<sup>69</sup> Bukhari, p. 83, hadith no. 362

<sup>70</sup> Bukhari, p. 83, hadith no. 358

In similar vein, Bukhari sets out a chapter heading: “In how many garments may a woman pray?” and begins with the statement of ‘Ikrimah, “If she covers her body with a single garment, it is sufficient.”<sup>71</sup>

The above analysis partly explains why many women of that time would largely stay at home, i.e. they simply did not have enough clothing to venture out in public, and the Prophet had forbidden, for example, the pre-Islamic practice of naked circumambulation of the Ka’bah.<sup>72</sup> Hence, the Prophet only obliged them to come out twice a year: to attend the Eid congregation, even if they would not be praying due to menses. It was for these Eid occasions that the Prophet advised women who did not have a *jilbab* to borrow one from a friend<sup>73</sup>, since the *jilbab* is simply a cloth than can be used to cover the whole body.

Thus, this ayah simply means in modern times that women (and men) should be dressed modestly in public, without being provocative or drawing attention towards themselves. For example, a (modest) top, blouse, jumper, blazer, jacket, coat or similar garment would all suffice for a woman to achieve the purpose of wearing a *jilbab*.

### **4.3 The *ayah* of the *hijab* (curtain)**

This *ayah* encourages gender-segregation wherever appropriate and/or possible or desirable, but does not obligate it, since many traditional authorities hold that it applies only to the Prophet’s household.

### **4.4 The *ayah* of *tabarruj* (flaunting oneself in public)**

This *ayah* clearly denounces lewd or lascivious behaviour in public, and aims to avoid a sexualisation of public society.

As for “staying at home,” this is mainly for monastic reasons: prayer and charity are encouraged later in the *ayah*. A woman’s prayer is traditionally-regarded as being better at home (although Ibn Hazm famously disagreed), but so is a man’s prayer, except for the congregational ones. In fact, the idea that “a man’s home is his monastery” is a common one in the Islamic tradition, since “Islam is like a society of married monks and nuns.”<sup>74</sup>

Women, like men, have every right to participate in the public space in matters such as politics, education, commerce, healthcare, agriculture, leisure and worship.

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<sup>71</sup> Bukhari, p. 85, paragraph preceding hadith no. 372

<sup>72</sup> Bukhari, p. 82, paragraph preceding hadith no. 351

<sup>73</sup> Bukhari, p. 82, hadith no. 351

<sup>74</sup> Seyyed Hossein Nasr, *A Young Muslim’s Guide to the Modern World*, Suhail Academy, Lahore, 1999.



## 5 Conclusion

In much contemporary Muslim discourse, the issue of women's dress is blown out of all proportion to the far more fundamental and essential Qur'anic themes of faith, prayer, charity, spiritual purification and progress, and the constant remembrance of God.

The noble Qur'anic term of *hijab*, which in its highest sense refers to the veil between humanity and God that is lifted in the Hereafter for those who purify their souls sufficiently, has been reduced and incorrectly applied in modern discourse to a mere piece of clothing on a woman's head.

Traditionalist readings of the Qur'an tend to insist that women cover up in public, possibly including the face, hands and feet. These readings can be seen to be strongly-influenced by culture and context, with many traditional views on the subject of veiling being problematic for even modern traditionalists, ranging from the extremely harsh to the extremely permissive.

A holistic reading of the relevant Qur'anic texts, balancing tradition with reason and law with spirit, would simply suggest the following: believing men and women are to dress and behave modestly in public; people should be careful when looking at the opposite sex, avoid lustful glances, lewd or lascivious behaviour and guard their chastity; sexualisation of the public space is to be avoided; women, like men, have every right to participate in the public space in matters such as politics, education, commerce, healthcare, agriculture, leisure and worship.